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May 21, 2012

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

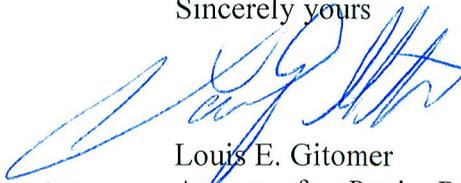
RE: Finance Docket No. 35622, *SteelRiver Infrastructure Partners LP*,
SteelRiver Infrastructure Associates LLC, *SteelRiver Infrastructure Fund*
North America LP and *Patriot Funding LLC—Control Exemption—Patriot*
Rail Corp. et al.

Dear Ms. Brown:

Enclosed for e-filing is a Motion to Modify Protective Order.

Thank you for your assistance. If you have any questions, please call or email
me.

Sincerely yours



Ahren Tryon
Attorney for: SteelRiver Infrastructure
Partners LP, SteelRiver Infrastructure
Associates LLC, SteelRiver Infrastructure
Fund North America LP and Patriot
Funding LLC

Louis E. Gitomer
Attorney for: Patriot Rail Corp., et al.

232336

Enclosures

ENTERED
Office of Proceedings
May 21, 2012
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35622

STEELRIVER INFRASTRUCTURE PARTNERS LP, STEELRIVER INFRASTRUCTURE
ASSOCIATES LLC, STEELRIVER INFRASTRUCTURE FUND NORTH AMERICA LP,
AND PATRIOT FUNDING LLC—CONTROL EXEMPTION—PATRIOT RAIL CORP., ET AL.

MOTION TO MODIFY PROTECTIVE ORDER

EXPEDITED HANDLING REQUESTED

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Attorney for Patriot Rail Corp., et al.

Ahren S. Tryon, Esq.
Cozen O'Connor
1627 Eye Street NW, Suite 1100
Washington, DC 20006
(202) 912-4827
Attorney for SteelRiver Infrastructure
Partners LP, SteelRiver Infrastructure
Associates LLC, SteelRiver Infrastructure
Fund North America LP and Patriot Funding
LLC

Dated: May 21, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35622

STEELRIVER INFRASTRUCTURE PARTNERS LP, STEELRIVER INFRASTRUCTURE ASSOCIATES LLC, STEELRIVER INFRASTRUCTURE FUND NORTH AMERICA LP, AND PATRIOT FUNDING LLC—CONTROL EXEMPTION—PATRIOT RAIL CORP., ET AL.

MOTION TO MODIFY PROTECTIVE ORDER

SteelRiver Infrastructure Partners LP, SteelRiver Infrastructure Associates LLC, SteelRiver Infrastructure Fund North America LP, and Patriot Funding LLC (collectively “SteelRiver”) and Patriot Rail Corp. (“Patriot”) file this Motion to Modify Protective Order (the “Motion”). In the instant proceeding, on May 18, 2012, the Surface Transportation Board (the “Board”) served a Protective Order. SteelRiver and Patriot request that the Board expeditiously modify the Protective Order to include protection for documents classified HIGHLY CONFIDENTIAL, as they sought in the Motion for Protective Order filed on May 7, 2012¹ and to permit the reclassification of the unredacted Stock Purchase Agreement (the “SPA”) as HIGHLY CONFIDENTIAL. A copy of the proposed Protective Order and HIGHLY CONFIDENTIAL undertaking is attached as Exhibit 1.

¹ The Motion for Protective Order was filed concurrently with the Notice for Exemption (the “Notice”) in Finance Docket No. 35622, *SteelRiver Infrastructure Partners LP, SteelRiver Infrastructure Associates LLC, SteelRiver Infrastructure Fund North America LP, and Patriot Funding LLC—Control Exemption—Patriot Rail Corp., et al.*, where SteelRiver seeks and exemption pursuant to 49 C.F.R. 1180.2(d)(2) to acquire control of Patriot and its railroad subsidiaries (the “Proposed Transaction”).

On May 18, 2012, Sierra Railroad Company and Sierra Northern Railway (“SERA” and collectively “Sierra”) filed a Motion for Access to Materials Filed Under Seal (the “Sierra Motion”). Sierra needlessly² asked the Board to serve the Protective Order that SteelRiver and Patriot had requested 11 days earlier so that Sierra could obtain access to the unredacted agreement whereby SteelRiver will acquire 100% of the stock of Patriot from Patriot Holdings LLC. The Sierra Motion at 3 states that SERA is a competitor of the Sacramento Valley Railroad, LLC (“SAV”), one of the 13 railroad subsidiaries of Patriot. Now that a competitor is seeking access to the unredacted SPA, SteelRiver and Patriot contend that it is appropriate to change the classification of the unredacted SPA from CONFIDENTIAL to HIGHLY CONFIDENTIAL. The Board has permitted the use of a HIGHLY CONFIDENTIAL designation where a party is a commercial party and has a competitive interest in the proceeding.³

Sierra also claims that a Housekeeping Stay may be appropriate if it does not receive the unredacted SPA. The Board, SteelRiver, and Patriot are blameless for any delay in Sierra receiving a copy of the unredacted SPA. Sierra is solely to blame and should not be permitted to profit from its dilatory tactics. As noted in footnote 2, STB counsel for Sierra could have received the unredacted SPA by sending a letter to STB counsel for SteelRiver and Patriot agreeing to be bound by the proposed protective order and executing the appropriate HIGHLY CONFIDENTIAL Undertaking. SteelRiver and Patriot hold open that offer to STB outside counsel of record in this matter for Sierra. There is no need for the management of the

² Had Sierra’s STB counsel informally approached STB counsel for SteelRiver and Patriot and agreed to abide by the Protective Order and HIGHLY CONFIDENTIAL Undertakings when served by the Board and executed the Undertakings, the SPA would have been provided immediately.

³ *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation*, Decision No. 37, STB Finance Docket No. 33388, slip op. at 2 (STB served September 18, 1997).

competitor of SAV or its counsel for the litigation in California to review the HIGHLY CONFIDENTIAL provisions of the SPA to determine if there is misuse of the Board's exemption procedures, which there is not, or if there are any anticompetitive effects on SERA as a result of the SPA, which there are not. Sierra's STB outside counsel are extremely familiar with the Board's consolidation procedures and highly competent.

SteelRiver and Patriot are compelled to respond to the two baseless rationales advanced in the Sierra Motion. First, Sierra questions the bona fides of Patriot's request for a continuance in the litigation between Patriot and Sierra in California. Without more, Sierra hints at Patriot having a nefarious motive involving the sale to SteelRiver. Sierra is wrong. Lead counsel for Patriot in the California litigation, Ms. M. Theresa Tolentino Meehan has an opportunity to travel to London to support her husband who will be coaching at the 2012 summer Olympics. See Exhibit 2. On that basis, Patriot requested a *three week* continuance of the original July 16, 2012 trial date. The District Court did not grant Patriot's motion, however, but instead continued the July 16 trial date to February 25, 2013, on its own motion. Patriot's motion was denied as moot. See Exhibit 3. Accordingly, it is clear that Sierra is attempting to mislead the Board as to this irrelevant issue.

Next, Sierra claims that SteelRiver and Patriot are attempting to prevent meaningful review of the Proposed Transaction because Patriot opposed a motion to enjoin the Proposed Transaction in the Federal District Court in California. Patriot is permitted to oppose any motion filed in the California litigation by Sierra. More importantly, and as the Board will immediately recognize, jurisdiction over the Proposed Transaction rests exclusively with the Board, not the Federal District Courts. See 49 U.S.C. §§11321 and 11323. It is even recognized in the Sierra Motion that the appropriate venue to seek a stay of the proposed transaction is before the Board.

Moreover, the parties to the California litigation are Patriot Rail Corp. and Sierra Railroad Company. In the Proposed Transaction, Patriot Rail Holdings LLC is selling the stock of Patriot Rail Corp. to SteelRiver. In acquiring Patriot Rail Corp., SteelRiver is also acquiring control through Patriot Rail Corp. of its subsidiary railroads, including SAV. The Proposed Transaction will only result in an ownership change at the top by replacing Patriot Rail Holdings LLC with SteelRiver. Patriot Rail Corp., the plaintiff and counter-defendant in the California litigation will remain in control of its subsidiary railroads, including SAV. SteelRiver has filed the Notice pursuant to the Board's exclusive jurisdiction and in compliance with the governing statute and rules.

Granting this motion will facilitate the potential exchange and use of commercially sensitive material in this proceeding, including the SPA. For the reasons set forth above, SteelRiver and Patriot respectfully request that the Board expeditiously grant this Motion and adopt the protective order attached hereto.



Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Attorney for Patriot Rail Corp., et al.

Respectfully submitted,

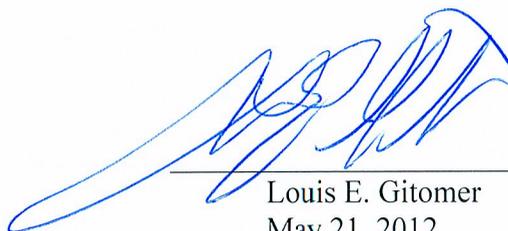
Ahren S. Tryon, Esq.
Cozen O'Connor
1627 Eye Street NW, Suite 1100
Washington, DC 20006
(202) 912-4827
Attorney for SteelRiver Infrastructure
Partners LP, SteelRiver Infrastructure
Associates LLC, SteelRiver Infrastructure
Fund North America LP and Patriot Funding
LLC

Dated: May 21, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served electronically
upon:

Roy Litland, Esq.
Step toe & Johnson LLP
1330 Connecticut Ave NW
Washington, DC 20036



Louis E. Gitomer
May 21, 2012

EXHIBIT 1—PROPOSED PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, or carriers, confidential financial and cost data, and other confidential or proprietary business or personal information.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with Paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.

(d) “Proceedings” means those before the Surface Transportation Board (“Board”) concerning the Notice of Exemption filed in Docket No. FD 35622 and any related proceedings before the Board, and any judicial review proceedings arising from Docket No. FD 35622 or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains shipper-specific rate or cost data, trackage rights compensation levels or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as “HIGHLY CONFIDENTIAL.” Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside STB counsel or outside STB consultant to a party to these Proceedings, or to an employee of such outside STB counsel or outside STB

consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this order.

6. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

7. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in Docket No. FD 35622, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Docket No. FD 35622 and/or with any related proceedings.

8. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, remands.

9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as “Confidential Materials Subject to Protective Order.” See 49 C.F.R. § 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of any administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, “Confidential Materials Subject to Request for Protective Order,” and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

11. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the

Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

12. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in Paragraph 9 of this Protective Order.

13. To the extent that materials reflecting Confidential Information are produced by a party in these proceedings, and are held and/or used by the receiving person in compliance with Paragraphs 1, 2 or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904 or of any other relevant provision of the ICC Termination Act of 1995.

14. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

15. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

16. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

Exhibit A
UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on May __, 2012, governing the production and use of Confidential Information and Confidential Documents in Docket No. FD 35622 understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose, other than the preparation and presentation of evidence and argument in Docket No. FD 35622, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Docket No. FD 35622 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL”, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated:

Exhibit B
UNDERTAKING – HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on May __, 2012, governing the production and use of Confidential Information and Confidential Documents in Docket No. FD 35622 understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in Docket No. FD 35622, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with Docket No. FD 35622 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as ‘HIGHLY CONFIDENTIAL’, that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside STB counsel or outside STB consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL”, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this undertaking and that other parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated:

EXHIBIT 2-AFFIDAVIT OF MS. TOLENTINO

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12 Attorneys for Plaintiff and Counter Defendant,
Patriot Rail Corp.; and Cross Defendants,
13 Patriot Rail, LLC and Larry Coe

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA
16 SACRAMENTO DIVISION

17 PATRIOT RAIL CORP., a Delaware
18 corporation,

19 Plaintiff,

20 v.

21 SIERRA RAILROAD COMPANY, a
22 California corporation,

23 Defendant.

24 And Related Counterclaim.
25
26
27
28

Case No. 2:09-cv-00009-MCE-EFB

DECLARATION OF M. THERESA
TOLENTINO MEEHAN IN SUPPORT OF
MOTION TO CONTINUE TRIAL

Hearing:

Date: April 19, 2012

Time: 2:00 p.m.

Dept: Courtroom 7

Judge: Morrison C. England, Jr.

1 A true and correct copy of the letter from John Taylor, dated March 7, 2012, is attached to this
2 Declaration as Exhibit "C."

3 6. On March 12, 2012, I received an email from Sierra's counsel, Louis Gonzalez,
4 indicating that Sierra has considered the request for a continuance and it would prepare a
5 proposed stipulation that it could agree to present to the Court.

6 7. On March 13, 2012, Sierra sent its proposed stipulation for the continuance which
7 requires Patriot to agree:

8 [T]hat until the trial of this matter is concluded, it will not to sell,
9 dispose, encumber or transfer the assets of Sacramento Valley
10 Railroad, LLC which conducts the rail operations at McClellan
11 Park which is at issue in this action.

12 A true and correct copy of Sierra's Proposed Stipulation, sent March 13, 2012, is attached to this
13 declaration as Exhibit "D."

14 8. On March 14, 2012, Mary-Olga Lovett and I held a telephone conference with
15 Louis Gonzalez to discuss Sierra's proposed stipulation. In that telephone conference, I stated
16 that I could not place my interests above of Patriot, and thus could not recommend or request that
17 Patriot stipulate to a continuance under any conditions that would limit Patriot's rights to its
18 assets such as Sacramento Valley Railroad LLC and other arguments in this case especially when
19 there is no legal basis to do so. I further indicated that placing any condition to obtain the
20 continuance would put my interests in direct conflict with those of Patriot. Nonetheless, at
21 counsel's request, I agreed to present Sierra's proposed stipulation and the conditions contained
22 therein to Patriot. We agreed to further conference regarding the stipulation and a potential
23 agreement to a trial before a Magistrate Judge if the court is unable to grant a short continuance
24 after discussing such issues with our respective clients.

25 9. After presenting Sierra's proposed stipulation to Patriot that same day, I informed
26 Sierra counsel via email that Patriot would not agree to Sierra's conditions regarding Sacramento
27 Valley Railroad or withdraw any of its arguments on the Motion to Strike Sierra's untimely
28 expert report. I requested that Sierra reconsider the stipulation without such conditions and

1 provided a revised proposed stipulation. In the revised stipulation, I also included language
2 regarding possibly transferring this matter to a Magistrate Judge should the court be unable to
3 grant a short continuance. A true and correct copy of the email from me to Louis Gonzalez with
4 attached Revised Stipulation, dated March 14, 2012, is attached to this declaration as Exhibit "E."

5 10. On March 15, 2012, Sierra counsel informed me that after reviewing the March 14
6 email and the Revised Stipulation, it appears the parties would not be able to stipulate to a
7 continuance. A true and correct copy of Louis Gonzalez's March 15, 2012, email is attached as
8 Exhibit "F." Via teleconference today, I confirmed the same and informed Sierra counsel that
9 Patriot would seek the continuance through the instant motion.

10 11. Patriot has abided by all deadlines set forth in the Pretrial Scheduling Order and
11 any subsequent modifications thereof. The instant motion to continue is Patriot's first and only
12 request to continue the trial date.

13 I declare under penalty of perjury under the laws of the United States that the foregoing is
14 true and correct.

15 Executed on this 15th day of March 2012, at Sacramento, California.

16 /s/ M. Theresa Tolentino Meehan
17 M. Theresa Tolentino Meehan

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EXHIBIT A

EESTI UJUMISLIIT • ESTONIAN SWIMMING FEDERATION



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Estonia
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Fax: +372 603 1529
E-mail:
estswim@swimming.ee

Ujumine
Swimming

Veepall
Water Polo

Avavee ujumine
Open Water

Meisterujumine
Masters

07.03.2012

Dear Greg Meehan,

On behalf of the Estonian Swimming Federation along with the Estonian Olympic Committee we are proud to invite you to be a Coaching Staff member for TEAM ESTONIA for the 2012 London Olympic Games. Your presence is requested in London from 8 July through 5 August.

Sincerely,

Riho Aljand
Head coach of Estonian Swimming Team
and Estonian Olympic Swim Team

Mob. +372 56562611
riho@swimming.ee

EXHIBIT B



500 Capitol Mall, Suite 1600
Sacramento, CA 95811
main 916.447.0700
fax 916.447.4781
www.stoel.com

March 7, 2012

M. THERESA TOLENTINO MEEHAN
Direct (916) 319-4677
Facsimile (916) 447-4781
ttmeehan@stoel.com

VIA EMAIL AND U.S. MAIL

Louis Gonzalez, Jr.
Weintraub Genshlea Chediak Tobin & Tobin
400 Capitol Mall, 11th Floor
Sacramento, CA 95814

**Re: *Patriot Rail Corp. v. Sierra Railroad Company*
USDC, Eastern District, Case No. 2:09-cv-00009 MCE-EFB**

Dear Louis:

As you are aware, the trial for this case is set to begin on July 16, 2012. Days and hours for trial before Judge England are 9:00 a.m. to 4:30 p.m., Monday, Tuesday, and Wednesday. Rule IV of Judge England's Standing Rules. The parties originally estimated that the trial would last fifteen days. *See* Pretrial Scheduling Order filed May 18, 2009, ECF No. 20.

Today we have learned of conflicts with the current estimated time frame of the trial – July 16 through August 15, 2012, and request that Sierra stipulate to a short continuance.

As you might recall, my husband, Greg Meehan, is the Associate Head of Men's Swimming and Diving Coach for the University of California, Berkeley. Today, my husband was officially invited to be a member of the coaching staff for Team Estonia for the 2012 Olympic games. Enclosed is his official invitation. Although we have been hoping for some time that my husband would be able to coach at the 2012 Olympic Games, we were not sure he would be participating until we received this official invitation from Estonia today. As you can imagine, I, along with my two sons, want to be in London to support him and would plan to attend from July 26 through August 5, 2012 (the week of the swimming events).

Upon receipt of the enclosed letter, I contacted my client as well as Patriot's designated expert John Taylor, about the scheduling conflict. During my conversation with Mr. Taylor, he also informed me that he recently was made aware of dates of another pending case in India as well as world championship competitions in Scotland that his son and he, as a chaperone, will be attending that conflict with the trial dates.



Louis Gonzalez, Jr.
March 7, 2012
Page 2

As you know, I have been representing Patriot on this case since 2009 and am the attorney most knowledgeable of the case. I took or defended 16 of the 19 depositions and handled a majority of the motions. It is very important to my client that I be in attendance and participate each day at trial. It is also important that I support my family in rare opportunities such as the Olympic Games. A short continuance of the trial (e.g. mid-August) would resolve this conflict.

We would appreciate if you would let us know whether Sierra would stipulate to a short continuance. Should Sierra choose not to do so, we will need to bring this to the attention of the Court as soon as possible.

Should you wish to discuss this further, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Theresa Tolentino Meehan", written in a cursive style.

M. Theresa Tolentino Meehan

cc: Mary-Olga Lovett

Enclosure



Pirita tee 12
10127 Tallinn
Estonia
Tel: +372 603 1530
Fax: +372 603 1529
E-mail:
estswim@swimming.ee

Ujumine
Swimming

Veepall
Water Polo

Avavee ujumine
Open Water

Meisterujumine
Masters

07.03.2012

Dear Greg Meehan,

On behalf of the Estonian Swimming Federation along with the Estonian Olympic Committee we are proud to invite you to be a Coaching Staff member for TEAM ESTONIA for the 2012 London Olympic Games. Your presence is requested in London from 8 July through 5 August.

Sincerely,

Riho Aljand
Head coach of Estonian Swimming Team
and Estonian Olympic Swim Team

Mob. +372 56562611
riho@swimming.ee

EXHIBIT C



HOULIHAN LOKEY



y July -J g p
- p y
g pionship g

EXHIBIT D

Forgeur, Dawn R.

From: Louis Gonzalez [lgonzalez@weintraub.com]
Sent: Tuesday, March 13, 2012 4:33 PM
To: Meehan, M.Theresa Tolentino
Cc: 'LovettM@gtlaw.com'; Scott Plamondon
Subject: RE: Patriot's Request to Continue Trial
Attachments: Stipulation and [Proposed] Order (1462798).DOC

Tess,

Attached find a stipulation that Sierra Rail is prepared to enter into to continue the trial which addresses it concerns associated with a further delay of the trial. Although the stipulation seeks a month's continuance to accommodate your and Mr. Taylor's schedule, we are not confident the Court can grant such a short continuance given the condition of Judge England's caseload.

I am in the office tomorrow if you want to discuss the stipulation before submitting it to the Court.

Louis A. Gonzalez
Attorney at Law

**weintraub genshlea chediak
tobin & tobin**

LAW CORPORATION

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Sacramento, CA 95814
916.558.6105 - Direct
916.446.1611 - Fax
lgonzalez@weintraub.com

www.weintraub.com

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From: Louis Gonzalez
Sent: Monday, March 12, 2012 3:25 PM
To: Meehan, M.Theresa Tolentino
Cc: LovettM@gtlaw.com; Scott Plamondon
Subject: Patriot's Request to Continue Trial

Tess,

I have reviewed your letter from Wednesday night requesting that Sierra Rail stipulate to a continuance of the trial date. We are exploring with our client how to agree to your request while addressing their concerns associated with a further delay of the trial date. We are preparing, and will forward tomorrow, a stipulation that Sierra is prepared to enter into to continue the trial date.

Louis A. Gonzalez
Attorney at Law

**weintraub genshlea chediak
tobin & tobin**

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1 Louis A. Gonzalez, Jr., State Bar No. 157373
2 Scott M. Plamondon, State Bar No. 212294
3 Audrey A. Millemann, State Bar No. 124954

**WEINTRAUB GENSHLEA CHEDIAK
TOBIN & TOBIN**

4 Law Corporation
5 400 Capitol Mall, 11th Floor
6 Sacramento, California 95814
7 (916) 558-6000 – Main
8 (916) 446-1611 – Facsimile

9 Attorneys for Defendant/Counterclaimant
10 Sierra Railroad Company

11 M. THERESA TOLENTINO MEEHAN, SBN 204112
12 MELISSA A. JONES, SBN 205576
13 CARISSA M. BEECHAM, SBN 254625
14 STOEL RIVES LLP
15 500 Capitol Mall, Suite 1600
16 Sacramento, CA 95814
17 Telephone: (916) 447-0700
18 Facsimile: (916) 447-4781

19 Attorneys for Plaintiff/Counter Defendant
20 Patriot Rail Corp. and Cross Defendants,
21 Patriot Rail, LLC and Larry Coe

22 UNITED STATES DISTRICT COURT
23 EASTERN DISTRICT OF CALIFORNIA

24 PATRIOT RAIL CORP.,

25 Plaintiff,

26 vs.

27 SIERRA RAILROAD COMPANY, a
28 California corporation,

Defendants.

Case No. CIV-S-09-0009-MCE-EFB

**STIPULATION AND [PROPOSED] ORDER
CONTINUING TRIAL DATE**

AND RELATED COUNTERCLAIMS

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LAW CORPORATION

STIPULATION AND [PROPOSED] ORDER

PATRIOT RAIL CORP. ("Patriot"), the plaintiff and counter defendant and SIERRA RAILROAD COMPANY ("Sierra"), the defendant and counterclaimant enter into this stipulation, through their counsel and pursuant to Patriot's request to continue the trial date currently set by the Court for July 16, 2012;

WHEREAS, a Motion to Strike the Supplemental Expert Report of Forrest A Vickery ("Motion") was filed by Patriot and is currently pending before the Court;

WHEREAS, as part of its Motion Patriot has alleged that it will be prejudiced by the Supplemental Expert Report served on December 19, 2011 because of the current trial date;

WHEREAS, on March 8, 2012, Tess Tolentino Meehan, Patriot's lead counsel informed Sierra that she now is unavailable on the date currently set for trial and requested that Sierra stipulate to a short continuance of the trial date so she may attend the Olympic Games in London with her family where her husband will be serving on the coaching staff for the Estonia National Swimming Team;

WHEREAS, on March 8, 2012, Tess Tolentino Meehan, also informed Sierra that Patriot's expert John Taylor is now unavailable on the date currently set for trial due to another case pending in India and his commitment to chaperone his son in a world championship competition occurring in Scotland and requested that Sierra stipulate to a short continuance of the trial date;

Whereas, to avoid prejudice to Sierra as a result of the trial delay, Patriot agrees that until the trial of this matter is concluded, it will not to sell, dispose, encumber or transfer the assets of Sacramento Valley Railroad, LLC which conducts the rail operations at McClellan Park which is at issue in this action.

Based on the foregoing, THE PARTIES AGREE that the trial on this matter shall be continued to August 16, 2012, at 9:00 a.m. or as soon thereafter as is practicable for the Court to set this matter for trial.

The undersigned, acting for, on behalf of, and with the full authorization of

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tobin & tobin
LAW CORPORATION

1 his or her client identified below, joins in the attached [Proposed] Order
2 Continuing Trial Date.

3 Dated: March 13, 2012 **weintraub genshlea chediak**
4 **tobin & tobin**
5 a law corporation

6 By: /s/ Louis A. Gonzalez, Jr.
7 Louis A. Gonzalez, Jr.
8 Scott M. Plamondon
9 Attorneys for Defendant/Counterclaimant
10 Sierra Railroad Company

11 Dated: March 13, 2012 **STOEL RIVES LLP**

12 By: /s/ M. Theresa Tolentino Meehan
13 M. Theresa Tolentino Meehan
14 Kevin T. Collins
15 Melissa A. Jones
16 Attorneys for Plaintiff/Counter Defendant
17 Patriot Rail Corp. and Cross Defendants,
18 Patriot Rail, LLC and Larry Coe

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[PROPOSED] ORDER

Based on the Stipulation between the Parties the Court hereby enters the following Order:

IT IS SO ORDERED that the July 16, 2012 trial date on this matter shall be continued to August 16, 2012, at 9:00 a.m.

DATED: March ____, 2012

Hon. Morrison C. England, Jr.
United States District Judge

weintraub genshlea chediak
tobin & lobin
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EXHIBIT E

Forgeur, Dawn R.

From: Meehan, M.Theresa Tolentino
Sent: Wednesday, March 14, 2012 8:55 PM
To: Louis Gonzalez
Cc: 'LovettM@gtlaw.com'; Scott Plamondon
Subject: RE: Patriot's Request to Continue Trial
Attachments: Stipulation and Proposed Order with Patriot Requested Changes.DOC

Dear Louis:

Thank you again for speaking with Mo and myself today via phone conference. We appreciate that Sierra has taken into consideration our request to continue the trial date. I have received a response to some of the issues we discussed and did not want to delay in providing you this information.

We have discussed Sierra's proposed Stipulation to continue the trial date with Patriot, and the various conditions Sierra requires in the draft stipulation. As we discussed in the call today, we cannot recommend or require Patriot to agree to any conditions especially those that limits Patriot's rights or arguments in this case for this continuance as to do so would put my interests in conflict with Patriot's interests.

Nevertheless, we discussed with Patriot your original draft Stipulation and provide the attached modified Stipulation. Patriot will not agree to condition the stipulation on waiving any arguments of prejudice on the motion to strike Vickery's December 2011 expert report. Patriot believes it is still prejudiced by the untimely report notwithstanding any continuance on the trial date as we discussed and as further detailed in the briefing on the motion. Additionally, Patriot will not agree to limit any of its rights with respect to Sacramento Valley Railroad. Based on this, you will see in the attached revised draft of the stipulation, we have omitted the 2,3 and 6 paragraphs of the original. We also have discussed the proposal you provided in our call today that Patriot agree to provide Sierra notice should it decide to sell any of its interest in Sacramento Valley Railroad in the future, and Patriot will not agree to this condition as well. Patriot disagrees with Sierra that it would be entitled to any injunctive relief with respect to the SAV operating agreement with McClellan even if it should prevail in this matter as Sierra has not sought specific performance as a remedy and more importantly, as McClellan is not a party to this action.

Patriot appreciates, however, the concern over a possible extended delay of the trial as a result of the request for a short continuance. Thus, the revised draft does include language regarding submitting the case to be tried before a mutually agreeable Magistrate Judge that has the earliest availability to preside over the case. We believe this option will assist the parties on obtaining the earliest trial date possible should the request to continue be granted and the court is unable to try the case before September 2012. As we discussed, this may resolve Sierra's concerns (as well as Patriot's), on an extended delay with a new trial date.

We look forward to discussing this further with you tomorrow at 9:00 a.m. Should you need any additional information, please let me know.

Thanks. Tess

Tess Tolentino Meehan
STOEL RIVES LLP
Direct: (916) 319-4677 General: (916) 447-0700

From: Louis Gonzalez [mailto:lgonzalez@weintraub.com]
Sent: Tuesday, March 13, 2012 4:33 PM
To: Meehan, M.Theresa Tolentino

Subject: RE: Patriot's Request to Continue Trial

Tess,

Attached find a stipulation that Sierra Rail is prepared to enter into to continue the trial which addresses its concerns associated with a further delay of the trial. Although the stipulation seeks a month's continuance to accommodate your and Mr. Taylor's schedule, we are not confident the Court can grant such a short continuance given the condition of Judge England's caseload.

I am in the office tomorrow if you want to discuss the stipulation before submitting it to the Court.

Louis A. Gonzalez
Attorney at Law

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From: Louis Gonzalez
Sent: Monday, March 12, 2012 3:25 PM
To: Meehan, M. Theresa Tolentino
Cc: LovettM@gtlaw.com; Scott Plamondon
Subject: Patriot's Request to Continue Trial

Tess,

I have reviewed your letter from Wednesday night requesting that Sierra Rail stipulate to a continuance of the trial date. We are exploring with our client how to agree to your request while addressing their concerns associated with a further delay of the trial date. We are preparing, and will forward tomorrow, a stipulation that Sierra is prepared to enter into to continue the trial date.

Louis A. Gonzalez
Attorney at Law

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1 Louis A. Gonzalez, Jr., State Bar No. 157373
2 Scott M. Plamondon, State Bar No. 212294
3 Audrey A. Millemann, State Bar No. 124954
4 **WEINTRAUB GENSHLEA CHEDIAK**
5 **TOBIN & TOBIN**
6 Law Corporation
7 400 Capitol Mall, 11th Floor
8 Sacramento, California 95814
9 (916) 558-6000 – Main
10 (916) 446-1611 – Facsimile

11 Attorneys for Defendant/Counterclaimant
12 Sierra Railroad Company

13 M. THERESA TOLENTINO MEEHAN, SBN 204112
14 STOEL RIVES LLP
15 500 Capitol Mall, Suite 1600
16 Sacramento, CA 95814
17 Telephone: (916) 447-0700
18 Facsimile: (916) 447-4781

19 MARY-OLGA LOVETT, admitted *pro hac vice*
20 lovettm@gtlaw.com
21 GREENBERG TRAUERIG, LLP
22 1201 K Street, Suite 1100
23 Sacramento, CA 95814
24 Telephone: (916) 442-1111
25 Facsimile: (916) 448-1709

26 Attorneys for Plaintiff/Counter Defendant
27 Patriot Rail Corp. and Cross Defendants,
28 Patriot Rail, LLC and Larry Coe

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

21 PATRIOT RAIL CORP.,

22 Plaintiff,
23 vs.

24 SIERRA RAILROAD COMPANY, a
25 California corporation,

26 Defendants.

27 AND RELATED COUNTERCLAIMS
28

Case No. CIV-S-09-0009-MCE-EFB

**STIPULATION AND [PROPOSED] ORDER
CONTINUING TRIAL DATE**

STIPULATION AND [PROPOSED] ORDER

1
2 Plaintiff and counter defendant, PATRIOT RAIL CORP., and counter
3 defendants Patriot Rail, LLC and Larry Coe, (collectively, "Patriot"), and SIERRA
4 RAILROAD COMPANY ("Sierra"), the defendant and counterclaimant enter into
5 this stipulation, through their counsel and pursuant to Patriot's request to continue
6 the trial date currently set by the Court for July 16, 2012;

7 WHEREAS, on October 26, 2011, the Court on its own motion ordered that
8 the trial in this matter be continued to July 16, 2012 (ECF No. 185);

9 WHEREAS, M. Theresa Tolentino Meehan has been counsel for Patriot in this
10 matter since 2009, and on behalf of Patriot, has been responsible for a majority of
11 the motions, discovery and 16 of the 19 depositions in this case;

12 WHEREAS, on March 7, 2012, Ms. Tolentino Meehan's husband, Greg
13 Meehan, received an official invitation to serve on the coaching staff for the
14 Estonia National Swimming Team for the 2012 Olympic Games in London,
15 England, and his presence in London is required from July 8 through August 5,
16 2012;

17 WHEREAS, on March 7, 2012, Ms. Tolentino Meehan immediately informed
18 Sierra that she now is unavailable on the date currently set for trial and requested
19 that Sierra stipulate to a short continuance so that she may attend the Olympic
20 Games in London with her family where her husband will be serving on the
21 coaching staff for the Estonia National Swimming Team;

22 WHEREAS, on March 7, 2012, Ms. Tolentino Meehan, also informed Sierra
23 that Patriot's expert John Taylor is now unavailable on the date currently set for
24 trial due to another case pending in India and his commitment to chaperone his
25 son in a world championship competition occurring in Scotland;

26 WHEREAS, it is important to Patriot that its counsel most knowledgeable of
27 the case, Ms. Tolentino Meehan, be in attendance throughout the trial in this
28 matter; and,

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tobin & tobin
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1 WHEREAS, the parties are not requesting to move the discovery cut-off nor
2 any other hearing dates or motion deadlines set forth in the Pretrial Scheduling
3 Order.

4 Based on the foregoing, THE PARTIES AGREE to continue the trial in this
5 matter to August 20, 2012, at 9:00 a.m. or as soon thereafter as is practicable for
6 the Court. THE PARTIES FURTHER AGREE that should the Court be unable to
7 continue the trial to a date prior to September 2012, the parties will consent to
8 have this matter tried before a mutually agreeable Magistrate Judge that is
9 available on August 20, 2012 or as soon thereafter as is practicable.

10 The undersigned, acting for, on behalf of, and with the full authorization of
11 his or her client identified below, joins in the attached [Proposed] Order
12 Continuing Trial Date.

13
14 Dated: March 14, 2012

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tobin & tobin
a law corporation

15
16
17 By: /s/ Louis A. Gonzalez, Jr.
Louis A. Gonzalez, Jr.
Scott M. Plamondon
Attorneys for Defendant/Counterclaimant
Sierra Railroad Company

18
19
20 Dated: March 14, 2012

STOEL RIVES LLP

21
22 By: /s/ M. Theresa Tolentino Meehan
M. Theresa Tolentino Meehan
Melissa A. Jones
Attorneys for Plaintiff/Counter Defendant
Patriot Rail Corp. and Cross Defendants,
Patriot Rail, LLC and Larry Coe

[PROPOSED] ORDER

Based on the Stipulation between the parties, the Court finds good cause to continue the current trial date of July 16, 2012. IT IS HEREBY ORDERED that the trial date in this matter shall be continued to _____, 2012, at 9:00 a.m., and that this trial date shall not alter the discovery cut-off, hearing dates or motion deadlines set forth in the Court's Pretrial Scheduling Order, as further modified by the Order Continuing Trial dated October 26, 2011 (ECF No. 185).

Alternative proposed language should the court be unable to preside over the trial in August 2012: Based on the Stipulation between the parties, the Court finds good cause to continue the current trial date of July 16, 2012. The Court, however, is unable to provide a new trial date prior to September 2012. Thus, IT IS HEREBY ORDERED that the July 16, 2012 trial date is vacated and, based on the consent of the parties, this matter will be transferred to a mutually agreeable Magistrate Judge that has the earliest availability to preside over a trial in this matter. The trial date shall be re-set by Order of the Magistrate Judge. IT IS FURTHER HEREBY ORDERED that vacating the July 16, 2012 trial date as well as transferring this case to a Magistrate Judge, shall not alter the discovery cut-off, hearing dates or motion deadlines set forth in the Court's Pretrial Scheduling Order, as further modified by the Order Continuing Trial dated October 26, 2011 (ECF No. 185).

DATED: March ____, 2012

Hon. Morrison C. England, Jr.
United States District Judge

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tobin & tobin
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EXHIBIT F

Forgeur, Dawn R.

From: Louis Gonzalez [lgonzalez@weintraub.com]
Sent: Thursday, March 15, 2012 9:45 AM
To: Meehan, M.Theresa Tolentino
Cc: LovettM@gtlaw.com; Scott Plamondon
Subject: RE: Patriot's Request to Continue Trial

Tess,

I'm back in the office and had an opportunity to read your email and attachment on my computer. It looks like the parties are not going to agree on a stipulation but let's have the call to confirm if that is the case.

Louis A. Gonzalez
Attorney at Law

400 Capitol Mall, 11th Floor
Sacramento, CA 95814
916.558.6105 - Direct
916.446.1611 - Fax
lgonzalez@weintraub.com

www.weintraub.com

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

From: Meehan, M.Theresa Tolentino [mailto:TTMEEHAN@stoel.com]
Sent: Thursday, March 15, 2012 8:55 AM
To: Louis Gonzalez

Case 2:09-cv-00009-MCE-EFB Document 219-1 Filed 03/15/12 Page 30 of 33
Cc: LovettM@gflaw.com; Scott Plamondon
Subject: Re: Patriot's Request to Continue Trial

Okay with me. Will you send me a quick email when you are available and then I will call you and Mo.
Thanks. Tess

Sent from my iPhone

On Mar 15, 2012, at 8:51 AM, "Louis Gonzalez" <lgonzalez@weintraub.com> wrote:

> Tess,

>

> I need to push back our call about half an hour. I'm at a doctor's office and it's taking longer than expected.

>

> Sent from my iPhone

>

> On Mar 14, 2012, at 8:55 PM, "Meehan, M.Theresa Tolentino"

<TTMEEHAN@stoel.com<mailto:TTMEEHAN@stoel.com>> wrote:

>

> Dear Louis:

>

> Thank you again for speaking with Mo and myself today via phone conference. We appreciate that Sierra has taken into consideration our request to continue the trial date. I have received a response to some of the issues we discussed and did not want to delay in providing you this information.

>

> We have discussed Sierra's proposed Stipulation to continue the trial date with Patriot, and the various conditions Sierra requires in the draft stipulation. As we discussed in the call today, we cannot recommend or require Patriot to agree to any conditions especially those that limits Patriot's rights or arguments in this case for this continuance as to do so would put my interests in conflict with Patriot's interests.

>

> Nevertheless, we discussed with Patriot your original draft Stipulation and provide the attached modified Stipulation. Patriot will not agree to condition the stipulation on waiving any arguments of prejudice on the motion to strike Vickery's December 2011 expert report. Patriot believes it is still prejudiced by the untimely report notwithstanding any continuance on the trial date as we discussed and as further detailed in the briefing on the motion. Additionally, Patriot will not agree to limit any of its rights with respect to Sacramento Valley Railroad. Based on this, you will see in the attached revised draft of the stipulation, we have omitted the 2,3 and 6 paragraphs of the original. We also have discussed the proposal you provided in our call today that Patriot agree to provide Sierra notice should it decide to sell any of its interest in Sacramento Valley Railroad in the future, and Patriot will not agree to this condition as well. Patriot disagrees with Sierra that it would be entitled to any injunctive relief with respect to the SAV operating agreement with McClellan even if it should prevail in this matter as Sierra has not sought specific performance as a remedy and more importantly, as McClellan is not a party to this action.

>

> Patriot appreciates, however, the concern over a possible extended delay of the trial as a result of the request for a short continuance. Thus, the revised draft does include language regarding submitting the case to be tried before a mutually agreeable Magistrate Judge that has the earliest availability to preside over the case. We believe this option will assist the parties on obtaining the earliest trial date possible should the request to continue be granted and the court is unable to try the

Case 2:09-cv-00009-MCE-EFB Document 219-1 Filed 03/15/12 Page 31 of 33
case before September 2012. As we discussed, this may resolve Sierra's concerns (as well as Patriot's), on an extended delay with a new trial date.

>
> We look forward to discussing this further with you tomorrow at 9:00 a.m. Should you need any additional information, please let me know.
>
> Thanks. Tess
>
>
> Tess Tolentino Meehan
> STOEL RIVES LLP
> Direct: (916) 319-4677<tel:(916)%20319-4649> | General: (916) 447-0700<tel:(916)%20447-0700>
>
> From: Louis Gonzalez [mailto:lgonzalez@weintraub.com]
> Sent: Tuesday, March 13, 2012 4:33 PM
> To: Meehan, M. Theresa Tolentino
> Cc: 'LovettM@gtlaw.com<mailto:LovettM@gtlaw.com>'; Scott Plamondon
> Subject: RE: Patriot's Request to Continue Trial
>
> Tess,
>
> Attached find a stipulation that Sierra Rail is prepared to enter into to continue the trial which addresses its concerns associated with a further delay of the trial. Although the stipulation seeks a month's continuance to accommodate your and Mr. Taylor's schedule, we are not confident the Court can grant such a short continuance given the condition of Judge England's caseload.
>
> I am in the office tomorrow if you want to discuss the stipulation before submitting it to the Court.
>
> Louis A. Gonzalez
> Attorney at Law
>
> <image001.gif>
> 400 Capitol Mall, 11th Floor
> Sacramento, CA 95814
> 916.558.6105 - Direct
> 916.446.1611 - Fax
> lgonzalez@weintraub.com<mailto:lgonzalez@weintraub.com>
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> From: Louis Gonzalez
> Sent: Monday, March 12, 2012 3:25 PM
> To: Meehan, M.Theresa Tolentino
> Cc: LovettM@gtlaw.com<mailto:LovettM@gtlaw.com>; Scott Plamondon
> Subject: Patriot's Request to Continue Trial

>

> Tess,

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> I have reviewed your letter from Wednesday night requesting that Sierra Rail stipulate to a continuance of the trial date. We are exploring with our client how to agree to your request while addressing their concerns associated with a further delay of the trial date. We are preparing, and will forward tomorrow, a stipulation that Sierra is prepared to enter into to continue the trial date.

>

> Louis A. Gonzalez
> Attorney at Law

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> <image001.gif>
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> To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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EXHIBIT 3-COURT ORDER

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRIOT RAIL CORP.,
Plaintiff,
v.
SIERRA RAILROAD COMPANY,
Defendants.

No. 2:09-cv-00009-MCE-EFB

ORDER

On the Court's own motion, the Court makes the following
Orders.

I. FINAL PRETRIAL CONFERENCE

The May 17, 2012 Final Pretrial Conference is vacated and
continued to **December 13, 2012 at 2:00 p.m.** in Courtroom 7. At
least one of the attorneys who will conduct the trial for each of
the parties shall attend the Final Pretrial Conference. If by
reason of illness or other unavoidable circumstance a trial
attorney is unable to attend, the attorney who attends in place
of the trial attorney shall have equal familiarity with the case
and equal authorization to make commitments on behalf of the
client.

1 Counsel for all parties are to be fully prepared for trial
2 at the time of the Final Pretrial Conference, with no matters
3 remaining to be accomplished except production of witnesses for
4 oral testimony.

5 The parties shall file, not later than **November 15, 2012**, a
6 Joint Final Pretrial Conference Statement. The provisions of
7 Local Rules 281 shall apply with respect to the matters to be
8 included in the Joint Final Pretrial Conference Statement. In
9 addition to those subjects listed in Local Rule 281(b), the
10 parties are to provide the Court with a plain, concise statement
11 that identifies every non-discovery motion tendered to the Court
12 and its resolution. Failure to comply with Local Rule 281, as
13 modified by this Pretrial Scheduling Order, may be grounds for
14 sanctions.

15 At the time of filing the Joint Final Pretrial Conference
16 Statement, counsel shall also electronically mail to the Court in
17 digital format compatible with Microsoft Word or WordPerfect, the
18 Joint Final Pretrial Conference Statement in its entirety
19 including the witness and exhibit lists. **These documents shall**
20 **be sent to: mceorders@caed.uscourts.gov.**

21 The parties should identify first the core undisputed facts
22 relevant to all claims. The parties should then, in a concise
23 manner, identify those undisputed core facts that are relevant to
24 each claim. The disputed facts should be identified in the same
25 manner. Where the parties are unable to agree as to what
26 disputed facts are properly before the Court for trial, they
27 should nevertheless list all disputed facts asserted by each
28 party.

1 Each disputed fact or undisputed fact should be separately
2 numbered or lettered.

3 Each party shall identify and concisely list each disputed
4 evidentiary issue which will be the subject of a motion in
5 limine.

6 Each party shall identify the points of law which concisely
7 describe the legal issues of the trial which will be discussed in
8 the parties' respective trial briefs. Points of law should
9 reflect issues derived from the core undisputed and disputed
10 facts. Parties shall not include argument or authorities with
11 any point of law.

12 The parties shall prepare a joint statement of the case in
13 plain concise language which will be read to the jury at the
14 beginning of the trial. The purpose of the joint statement is to
15 inform the jury what the case is about.

16 The parties are reminded that pursuant to Local Rule 281
17 they are required to list in the Joint Final Pretrial Conference
18 Statement all witnesses and exhibits they propose to offer at
19 trial. After the name of each witness, each party shall provide
20 a brief statement of the nature of the testimony to be proffered.
21 The parties may file a joint list or each party may file separate
22 lists. These list(s) shall not be contained in the body of the
23 Joint Final Pretrial Conference Statement itself, but shall be
24 attached as separate documents to be used as addenda to the Final
25 Pretrial Order.

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1 Plaintiff's exhibits shall be listed numerically.
2 Defendant's exhibits shall be listed alphabetically. The parties
3 shall use the standard exhibit stickers provided by the Court
4 Clerk's Office: pink for plaintiff and blue for defendant. In
5 the event that the alphabet is exhausted, the exhibits shall be
6 marked "AA-ZZ" and "AAA-ZZZ" etc. After three letters, note the
7 number of letters in parenthesis (i.e., "AAAA(4)") to reduce
8 confusion at trial. All multi-page exhibits shall be stapled or
9 otherwise fastened together and each page within the exhibit
10 shall be numbered. All photographs shall be marked individually.
11 The list of exhibits shall not include excerpts of depositions,
12 which may be used to impeach witnesses. In the event that
13 Plaintiff and Defendant offer the same exhibit during trial, that
14 exhibit shall be referred to by the designation the exhibit is
15 first identified. The Court cautions the parties to pay
16 attention to this detail so that all concerned, including the
17 jury, will not be confused by one exhibit being identified with
18 both a number and a letter.

19 The Final Pretrial Order will contain a stringent standard
20 for the offering at trial of witnesses and exhibits not listed in
21 the Final Pretrial Order, and the parties are cautioned that the
22 standard will be strictly applied. On the other hand, the
23 listing of exhibits or witnesses that a party does not intend to
24 offer will be viewed as an abuse of the court's processes.

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1 The parties also are reminded that pursuant to Rule 16 of
2 the Federal Rules of Civil Procedure it will be their duty at the
3 Final Pretrial Conference to aid the Court in: (a) the
4 formulation and simplification of issues and the elimination of
5 frivolous claims or defenses; (b) the settling of facts that
6 should properly be admitted; and (c) the avoidance of unnecessary
7 proof and cumulative evidence. Counsel must cooperatively
8 prepare the Joint Final Pretrial Conference Statement and
9 participate in good faith at the Final Pretrial Conference with
10 these aims in mind. A failure to do so may result in the
11 imposition of sanctions which may include monetary sanctions,
12 orders precluding proof, elimination of claims or defenses, or
13 such other sanctions as the Court deems appropriate.

14 VIII. TRIAL BRIEFS

15 The parties shall file trial briefs not later than
16 **November 28, 2012**. Counsel are directed to Local Rule 285
17 regarding the content of trial briefs.

18 IX. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

19 Any evidentiary or procedural motions are to be filed by
20 **November 21, 2012**. Oppositions must be filed by **November 28,**
21 **2012** and any reply must be filed by **December 5, 2012**. The
22 motions will be heard by the Court at the same time as the Final
23 Pretrial Conference.

24 X. TRIAL SETTING

25 The July 16, 2012 jury trial is vacated and continued to
26 **February 25, 2013 at 9:00 a.m.** in Courtroom 7. Trial will be by
27 jury. The panel will consist of eight (8) jurors. The parties
28 estimate a trial length of fifteen (15) days.

1 XI. SETTLEMENT CONFERENCE

2 At the Final Pretrial Conference, the Court may set a
3 settlement conference if the parties so request. In the event no
4 settlement conference is requested, the parties are free to
5 continue to mediate or attempt to settle the case with the
6 understanding that the trial date is a firm date.

7 In the event a settlement conference is set by the Court,
8 counsel are instructed to have a principal with full settlement
9 authority present at the Settlement Conference or to be fully
10 authorized to settle the matter on any terms. At least seven (7)
11 calendar days before the settlement conference, counsel for each
12 party shall submit to the chambers of the settlement judge a
13 confidential Settlement Conference Statement. Such statements
14 are neither to be filed with the Clerk nor served on opposing
15 counsel. Each party, however, shall serve notice on all other
16 parties that the statement has been submitted. If the settlement
17 judge is not the trial judge, the Settlement Conference Statement
18 shall not be disclosed to the trial judge.

19 Notwithstanding the foregoing, the parties may request a
20 settlement conference prior to the Final Pretrial Conference if
21 they feel it would lead to the possible resolution of the case.
22 In the event an early settlement conference date is requested,
23 the parties shall file said request jointly, in writing.
24 The request must state whether the parties waive
25 disqualification, pursuant to Local Rule 270(b), before a
26 settlement judge can be assigned to the case.

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1 Absent the parties' affirmatively requesting that the assigned
2 Judge or Magistrate Judge participate in the settlement
3 conference AND waiver, pursuant to Local Rule 270(b), a
4 settlement judge will be randomly assigned to the case.

5 XII. OTHER

6 Pursuant to this Order, the Plaintiff's Motion to Continue
7 Trial (ECF No. 219) is denied as moot. Accordingly, the
8 April 19, 2012 motion hearing is vacated.

9 IT IS SO ORDERED.

10 Dated: April 17, 2012

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE
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