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Office of Proceedings
May 28, 2014
Part of
Public Record
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May 28, 2014

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street S.W., Room 1034
Washington, D.C. 20423-0001

**RE: Request to Strike Objectionable Materials
Pursuant to 49 C.F.R. §1104.8 in:
STB Docket No. FD-34818,
STB Docket No. AB-167(sub1189X),
and
Concerning Reply in STB Docket No. FD-35825**

Dear Ms. Brown,

Yesterday we were served with papers from counsel for the City of Jersey City, et als in the three matters captioned above, in our capacity as counsel for 212 Marin Blvd. LLC, et als. The materials should be struck from the record in the first two matters under 49 C.F.R. §1104.8 which provides that: "The Board may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document." Perhaps short of being scandalous, the most recent filings by Mr. Montagne meet all of the other criteria.

FD-34818. This matter terminated when the U.S. Court of Appeals for the District of Columbia ruled in 2009 that the Board did not have jurisdiction to hear the matter. Consolidated Rail Corp. v. Surface Transp. Bd., 571 F.3d 13 (D.C. Cir. 2009) That ruling rendered those proceedings void. To the degree that Mr. Montagne is attempting to revisit, revive, or otherwise rely upon them, the filing is improper. To the extent that he is attempting to use the record of those proceedings in opposition to our pending petition in FD 35825, there is no basis to do so. We have not sought to revisit those proceedings which were declared void and he should not be permitted to do so either.

AB-167(sub. 1189X). This matter has been stayed by the Board and has not been reopened. If, or when, the Board determines to proceed in that matter, we reserve our rights to respond to any filings that the Board permits to be made within the record. The

materials just filed are an attempt to circumvent the Board's stay order and are entirely improper. His own filing also reflects that he has attempted to avoid the Board's stay order with Conrail but was properly rejected. See: Attachment C to submission, May 16, 2014 Conrail letter.

We also note that both filings contain a reply filed to our petition in FD 35825. Those replies are replete with unsupported factual statements, *ad hominem* arguments, and the allegations that we have filed so called SLAPP suits in state court. These allegations are entirely irrelevant, but are also not true, having been repeatedly rejected by every New Jersey court in which such allegations have been raised. Since Mr. Montagne's allegations were made under the protection of 49 U.S.C. §1104.13(c) and the rules do not permit us to reply to them, we respectfully ask that the Board construe Mr. Montagne's filings strictly in accord with the facts presented in our petition, or provide an exception to the cited rule so that we may file an appropriate response.

Respectfully yours,

WATERS, McPHERSON, McNEILL, P.C.

BY: 
DANIEL E. HORGAN

CC: Service List

I, Daniel E. Horgan, an attorney-at-law of New Jersey, New York, and the District of Columbia, hereby certify that on May 28, 2014 I caused service of this Letter filed with the Surface Transportation Board to be made upon the Board by Electronic Filing and that all persons listed on the Service List in STB Docket No. FD 35825 and AB-167(Sub 1189X) were served by First Class Mail in accordance with the provisions of 49 C.F.R. §1104.12.

BY: 
DANIEL E. HORGAN