

Before the Surface Transportation Board

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STB Docket No. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
HUDSON COUNTY, NJ

STB Docket No. AB-55 (Sub-No. 686X)
CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No.306X)
NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

**Reply to City et al.’s Motion to Compel Discovery from
LLC Intervenors
(Interrogatories, Document Demands, and Requests for Admissions)**

And

Cross-Motion for Sanctions Pursuant to 49 C.F.R. § 1114.21(c)

The LLC Intervenors (“LLCs”)¹ respectfully file this reply to the City of Jersey City (“City”), Rails to Trails Conservancy (“RTC”), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition’s (“Coalition”) (collectively, the “City et al.”) “Motion on Behalf of City of Jersey City et al To Compel 212 Marin Boulevard LLC, et al. to Answer Interrogatories, Make Admissions, and Provide Responsive Documents to Pending Document Requests,” filed on or about September 15, 2016. The City et al.’s discovery demands are entirely inappropriate and go well beyond the permitted scope of

¹ The LLC Intervenors are 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC.

discovery in this exempt abandonment proceeding. In view of the City et al.'s habit of serving irrelevant discovery, and then harassing the non-responder with motions, the LLCs respectfully request the entry of an appropriate protective order pursuant to 49 C.F.R. 1114.21(c).

Background to Discovery Demands

Currently pending before the Board is the exempt abandonment petition filed by Consolidated Rail Corp. ("Conrail") for abandonment authorization for a line of rail called the Harsimus Branch. The Harsimus Branch runs through downtown Jersey City. Decades ago, the need for freight rail service disappeared, and Conrail ceased operations along the Harsimus Branch. Conrail, at the urging of the City, removed the tracks, switches, cross-bridges, and other rail infrastructure in the 1990's, leaving only six earth-filled embankment walls. In 2005, Conrail sold the fee simple interest to the six embankment lots plus two at-grade parcels (collectively called the "Embankment") to the LLCs. (See, Consolidated Rail Corp. v. Surface Transp. Bd., 571 F.3d 13 (D.C. Cir. 2009), and City of Jersey City v. Conrail, 681 F.3d 741 (D.C. Cir. 2012), for background).

The City et al. wants the Embankment for some public purpose. The City et al.'s focus has been on using the Embankment for a park, open space, or a walking path. In some forums, the City claims it wants to restore freight rail service somewhere along the Harsimus Branch. However, the precise

nature of the City's rail plans has never been made public and is thus unknown.

Since 2005, the City et al., the LLCs, and Conrail have been involved in a variety of lawsuits and administrative proceedings, before the federal courts in the District of Columbia, the Superior Court of New Jersey, and the Board addressing various issues relating to the Harsimus Branch. From 2006 through 2014, the parties disputed whether the Harsimus Branch was a line of rail, subject to the Board's abandonment jurisdiction, or a spur track. Ultimately, the City et al. and the LLCs stipulated that a portion of the Harsimus Branch between mile post 0.00 and the eastern end of the Embankment at Marin Boulevard was an unabandoned line of rail. The United States District Court for the District of Columbia thereafter entered a declaratory judgment in favor of the City et al. City of Jersey City v. Consolidated Rail Corp., 968 F.Supp.2d 302 (D.D.C. 2013), *aff'd*, 2014 WL 1378306 (D.C. Cir. Feb. 19, 2014).

While the issue of whether the Harsimus Branch was a line or spur was addressed in the District Court, along with other issues, the Board held Conrail's petition for abandonment in abeyance. See, April 20, 2010 Board Decision. After the District Court settled that issue, the Board reactivated the case, and the LLCs' moved to intervene. See, August 11, 2014 Board Decision. The LLCs have an interest because they are the fee owners of the Embankment, and will be affected by decisions made in these proceedings.

Accordingly, the Board granted the LLCs intervenor status in its August 11, 2014 Decision.

After the LLCs intervened, the City et al. served written discovery requests on them (interrogatories and document demands). The City et al. made similar demands of Conrail. The LLCs also served discovery on the City et al. Following exchange of responses and objections, the disputes concerning discovery were submitted to the Board for resolution. The Board ruled on document demands served by the City et al. on Conrail and the LLCs, and the LLCs' requests for admissions on the City et al., on May 22, 2015. The Board granted in part and denied in part the parties' requests. In so ruling, the Board admonished the parties as follows: "We note, however, that the record has become voluminous and, in our opinion, needlessly so. Although the Board cannot limit submission by the parties in the future, we expect the parties to exercise sound judgment when weighing the need for future motions and objections." (May 22, 2015 Board Decision, at 8).

The Board then ruled on dueling motions to compel filed by the parties. By and large, the Board denied the City et al.'s motions, and reiterated the rule that discovery in abandonment proceedings, including this present action, is "disfavored," and that "parties seeking discovery in abandonments must demonstrate relevance and need." *Id.* at 4. In its May 22, 2015 Decision, the Board reaffirmed the principle that discovery is "typically disfavored in abandonment cases," and that a "parties seeking discovery in abandonments must demonstrate relevance and need." May 22, 2015 Board Decision at 4

(citing Cent. R.R. of Ind.—Aban. Exemption—in Dearborn, Decatur, Franklin, Ripley, & Shelby Cntys., Ind. (Dearborn), AB 459 (Sub-no. 2X) (STB served Apr. 1, 1998)), at 4. See, 49 C.F.R. § 1114.21(a)(1).

In a comprehensive appendix to the Decision, the Board reviewed each and every demand, and determined whether the demand fell within the bounds of relevancy and whether they were overly broad. The Board concluded that most of the City et al.'s discovery demands against both the LLCs and Conrail were overly broad and irrelevant to any issue in this abandonment Proceeding, and granted only limited discovery. See, May 22, 2015 Board Decision at 4-5 and Appendices A and B.

Months later, the Board issued a decision permitting Riffin to file a Notice of Intent to file an OFA. November 2, 2015 Board Decision, at 5-6.² The City et al. filed a petition with the United States Court of Appeals for the District of Columbia Circuit challenging the Board's November 2, 2015 decision permitting Riffin to file a Notice of Intent, as well as the Board's rejection in that decision of the City et al.'s appeal from a 2009 ruling of the Director of Proceedings concerning the scope and contents of OFAs. City of Jersey City v. Surface Transp. Bd., Court of Appeals docket number 15-1435. On April 4, 2016, the D.C. Circuit Court dismissed the petition as being interlocutory.

A. City et al.'s Discovery Demands on Riffin

² In their written response to the City et al.'s discovery, the LLCs mistakenly referred to the November 2, 2015 Board decision, when in fact it was the May 22, 2015 Decision that addressed discovery. The City et al.'s motion makes repeated references to the fact the November 2, 2015 Decision does not stand for the propositions cited by the LLCs, completely ignoring the obvious erroneous reference.

On March 28, 2016, the City et al. served document demands on Riffin, seeking documents generally relating to communications between Riffin and the LLCs and its agents, and documents relating to Riffin's financial condition. Those discovery requests are a direct precursor to the present demands made upon the LLCs. Riffin and the City et al. exchanged correspondence concerning Riffin's response to discovery, which ultimately led to the City et al. filing a motion to compel Riffin to respond. The City et al. withdrew that motion after the City et al. acknowledged that Riffin's belated responses and the City et al.'s motions were mailed at approximately the same time. Having received a response, the City et al. agreed its motion was moot.

Riffin's response, however, consisted largely of objections, and the City et al. again moved to compel responses from Riffin on July 5, 2016. That same day, the Director of Proceedings ordered, "This proceeding is assigned to Administrative Law Judge John P. Dring for handling of all discovery matters and initial resolution of all discovery disputes." See, July 5, 2016 Decision, at 2.

The LLCs opposed the motion, primarily on the ground that the discovery the City et al. sought from Riffin relating to his communications with agents of the LLCs was irrelevant and overly broad. The LLCs relied on the Board's discovery decision of May 22, 2015 to demonstrate that the City et al.'s asserted bases for need in the motion to compel rendered the discovery objectionable. The City et al.'s discovery sought, generally, information relating to their unfounded and unsubstantiated allegations that Riffin and the LLCs

were working to evade the jurisdiction of the Board, that Riffin and the LLCs were working to abuse the Board's processes, that the Harsimus Branch had been unlawfully transferred to the LLCs in 2005, and that the LLCs were attempting to demolish the Embankment. Those same topics had already been deemed overly broad and irrelevant in the Board's May 22, 2015 decision, when the City et al. had sought nearly identical information in discovery demands served on the LLCs and Conrail.

While the motion to compel was pending, counsel for the LLCs and the City et al. made an attempt to address the City et al.'s concerns that led to the discovery demands. As evidenced in the e-mail exchanges between counsel, **Exhibit A**, the City et al. proposed that if the LLCs were willing to stipulate that neither they nor their agents were supporting Riffin's OFA plans, including financial support, such assurance may obviate the need for discovery. In the course of negotiating this reasonable resolution, the LLCs advised counsel to the City et al. that the LLCs' manager, Steven Hyman, had stepped down from that post due, in part, to private health issues. The LLCs and the City et al. exchanged forms of stipulation. **Exhibit A.**

The LLCs and the City et al. could not agree on a form of stipulation, due to the City et al.'s insistence on including matters within the stipulation that the LLCs could not stipulate. The City et al. also managed to elevate Hyman's private health issues into a legal lack of capacity. The LLCs never claimed that Hyman lacked capacity in the legal sense of the term, merely that health issues were a factor in his determination to resign as the manager.

The City et al. then served discovery demands on the LLCs on August 11, 2016, including interrogatories, document demands, and requests for admissions. Responses were due in late August and early September.

On August 24, 2016, there was a hearing on the City et al.'s motion to compel Riffin to respond to document demands. Apparently, the night before, there was some sort of informal meeting at a restaurant attended by the City et al.'s attorney, Eric Strohmeier of CNJ Rail, and Riffin, at which Riffin offered to allow the City et al.'s attorney to review e-mails on his laptop computer. The City et al. requested copies of the e-mails, and not merely the ability to review them from Riffin's computer. The next day, at the August 24, 2016 hearing, their agreement was placed on the record, with the LLCs' reserving their objections to the relevance of the City et al.'s document demands directed toward Riffin. On August 25, 2016, Judge Dring entered an order providing, "Mr. Riffin will provide the City, et al. and the Consolidated Rail Corporation with all e-mail communications between him and the LLCs that Mr. Riffin retains in his possession. Mr. Riffin will also supply the City, et al. the docket numbers for three (3) bankruptcy proceedings involving Mr. Riffin. Mr. Riffin shall comply with this order by close of business on Friday, August 26, 2016."

Riffin forwarded approximately 100 e-mails on August 26, 2016. The City et al. are dissatisfied with Riffin's response, and have moved to sanction Riffin for failure to comply with discovery and for other reasons relating to alleged other abuses of the Board's procedures in this and other matters.

B. LLCs' Response to Discovery and Attempts at Good Faith Resolution

On September 1, 2016, the LLCs timely responded to the interrogatories, document demands, and requests for admissions. The LLCs objected to the discovery demands, and in a covering letter, explained that the City et al.'s rationale for making discovery—to establish a plot by Riffin and the LLCs or their former manager to abuse the Board's jurisdiction, process, and remedies—lacked any basis in fact, as the LLCs have generally opposed OFAs and have specifically disavowed Riffin and his tactics on the record and throughout these exempt abandonment proceedings. The LLCs provided several documents, including an e-mail from counsel to the LLCs to Riffin dated March 7-8, 2015 (in which the LLCs disagree with Riffin's OFA ideas), an e-mail from Strohmeyer to Riffin dated September 18, 2015 (with original exhibits thereto, in which Strohmeyer urged Riffin to drop out of the proceeding, complained that Riffin was complicating the matter, and confirmed that the LLCs had disavowed Riffin), and a memo from Riffin to the developer of the Metro Plaza site dated October 14, 2015. **Exhibit B.** A September 14, 2015 filing by the City et al. with the Board, referenced to the Strohmeyer e-mail, explained that the City et al.'s attorney had some, perhaps all of the these documents.

The parties made further attempts at resolving discovery. The LLCs proposed another stipulation that reasonably addressed the City et al.'s concern that the LLCs or their former manager would support in some way a competing OFA to the City's OFA. The City et al. did not accept the stipulation and filed the instant motion. **Exhibit C.**

Argument
Point I

**The City et al.'s Motion to Compel
is Improper and Should be Denied**

The City et al.'s motion should be denied because it is improper by (1) failing to include the LLCs' complete discovery response, and (2) relying on unsubstantiated "facts," in the form of rumor, innuendo, and hearsay. The Board has already ruled that any party seeking discovery must show relevance and need. May 22, 2015 Board Decision at 4. By cherry-picking the LLCs' discovery responses and offering an explanation based on unverified statements, presented as "facts," the City et al. has failed to establish an entitlement to discovery.

First, the City et al.'s motion refers to the letter dated September 1, 2016 from counsel to the LLCs enclosing the LLCs' responses to discovery. Although mentioned in the Motion to Compel, that document is conspicuous by its absence from the City et al.'s papers. The City et al.'s fundamental basis to argue that there is a need for discovery is that Riffin and the LLCs or their former manager, Hyman, are engaged in a joint plan, *i.e.*, a conspiracy, to evade the Board's jurisdiction, processes, and remedies. In fact, the City et al. specifically state that the September 1, 2016 letter "is relevant not only in showing a connection between Riffin and the Hyman interests, but also as an example indicating that Riffin did not turn over all responsive documents in response to Judge Dring's order on August 25." Motion Brief at 4. One would think that a document "relevant" to an alleged "connection," which was given

as a component to the LLCs' response to discovery, would be provided with the motion to assist in its resolution. There is no such "connection," much less a conspiracy, and the City et al. know this, and so the City et al. conveniently omit the "relevant" September 1, 2016 letter and documents attached thereto from their Motion to Compel. The LLCs have consistently denied any connection, and described Riffin as an "interloper" to the proceedings. The LLCs acknowledged that Riffin has made various proposals to them over the years, and given his unsolicited "advice" on what the LLCs' strategy should be. The LLCs, as explained in the September 1, 2016 letter (**Exhibit B**), have rejected all of Riffin's suggestions.

Riffin's primary advice has been for the LLCs to file an OFA, or to support his OFA. The LLCs are on record, both before the Board and the Superior Court of New Jersey—where various issues touching on state law have been litigated—that all OFAs should be denied because there is no good faith basis to seek to restore freight rail service to the downtown Jersey City area after more than a quarter century without such service.³

The LLCs provided a copy of an e-mail from Eric Strohmeyer of CNJ Rail (the City's OFA ally) to Riffin, in which Strohmeyer likewise describes Riffin as

³ The LLCs have alleged in matters pending in the Superior Court of New Jersey that the City is pursuing its OFA, not to continue rail service, but to acquire the fee interest in the Embankment for non-rail purposes. The City's plan to use an OFA for non-rail purposes and to divest the LLCs' of their fee title, is not a wild conspiracy. The City Ordinance, adopted on January 13, 2016 that authorizes the filing of an OFA, expressly states that the City's goal in the OFA is to acquire the fee interest for property encompassing a portion of the Harsimus Branch for both rail and non-rail purposes. The City has refused to disclose its rail plans, citing attorney-client privilege and the attorney work product doctrine. The LLCs challenged that Ordinance, and it was upheld; however, the LLCs have appealed that decision, which appeal is now pending.

an interloper.⁴ Counsel to the City et al. was copied on that e-mail when it was originally sent. Indeed, the City et al. have themselves described Riffin in filings with the Board as “an unwarranted, disruptive, and ultimately unfair distraction for City et al and detrimental to the public interest.” City et al.’s 9/14/15 Brief, at 9 (excerpt attached as part of **Exhibit B** hereto). The LLCs, in their filings with the Board, have likewise disavowed Riffin when he purports to speak on their behalf.

The City et al.’s Motion to Compel omits not only the September 1, 2016 letter, but the Exhibits thereto, and submitted only the actual written discovery responses. In their motion to sanction Riffin, the City et al. provide only a portion of Exhibit C to the September 1, 2016 letter (appearing as Exhibit J in the Motion for Sanctions against Riffin). The City et al. cross-reference that exhibit in this Motion to Compel the LLCs. That Exhibit is a sixteen-page memo from Riffin to the attorney for the Metro Plaza developer, in which he casts the various parties in the roles of characters in a medieval farce. The absurdity of this memorandum not only shows that Riffin is acting alone (the memo is critical of the LLCs and their attorneys), but that Riffin cannot be considered as an answer to the problems this pending action has caused.

The City et al.’s motion proceeds to raise their allegations of a conspiracy as facts, and fails to cite a single concrete basis that one could argue, in good faith, makes discovery necessary or appropriate; and, the City et al.’s home-grown conspiracy theories are not relevant to any issue in these proceedings.

⁴ Despite such observation, Strohmeyer has provided assistance to Riffin in the form of a certification in opposition to the Metro Plaza developers’ motion to dismiss the District Court action. **Exhibit D**.

For example, the City et al. claim that Hyman continues to act as an agent of the LLCs, without offering any facts or specifics. Motion Brief, at 5.

The City et al.'s rationales for seeking discovery do not support allowing discovery; instead, those explanations provide the grounds for denying the motion. The City et al. offer as the only evidence of relevance that Riffin and Hyman had a meeting with a representative of a developer of the Metro Plaza site. The City et al. elevate that as "proof" that Riffin and Hyman are conspiring, and that the lawsuit Riffin filed against the Metro Plaza developer is part of that effort. That lawsuit in the District Court of New Jersey is not part of any plan involving the LLCs to foil the Board's proceedings. Neither the LLCs, Hyman, the City et al., or the Board, are parties. The City has no plans to file an OFA for the Metro Plaza site. The LLCs, on the other hand, are on record as opposing all OFAs.

Moreover, rather than impacting on the Board's proceedings, based on review of public filings, Riffin seeks to keep his claims out of the Board proceedings. It is the Metro Plaza developer who has filed a motion to dismiss Riffin's complaint based on the argument that the District Court for New Jersey lacks subject matter jurisdiction, and only the Board or the District of Columbia District Court (acting as the Special Court) can hear Riffin's case. Riffin has opposed that motion. How does a District Court lawsuit that does not involve any of the parties to these proceedings, except Riffin, and which Riffin has argued does not belong before the Board, impact the Board's jurisdiction? The City et al. does not bother to explain that deficiency, nor

have the defendants in that action claimed that Riffin's suit constitutes a violation of the Federal Rules of Civil Procedure, Rule 11.

Finally, if the City et al. think Riffin brought the Metro Plaza lawsuit for improper purposes, the City et al. can move to intervene and then seek discovery in that case rather than seeking discovery in these proceedings.⁵ It is unfathomable how a lawsuit allegedly brought for improper purposes in the District of New Jersey is an issue relevant to the Board in an expedited abandonment proceeding. The Board cannot decide that Riffin's District Court lawsuit was filed for improper purposes, and thus discovery under the Board's procedures is entirely unjustified, irrelevant, and overly broad.

The City et al.'s decision to cherry-pick the LLCs' discovery response, and reliance on unproven "facts" about activities in an unrelated proceeding, render its motion improper, and subject to denial.

Point II

The City et al.'s Discovery Requests Delve into Areas Patently Irrelevant to any Issue in This Expedited Abandonment Proceeding

On May 22, 2015, the Board in large part denied the City et al.'s motion to compel discovery from the LLCs and Conrail. The Board has concluded that the City et al.'s request to take discovery into matters including the LLCs' efforts to evade the Board's jurisdiction, abusing the Board's procedures,

⁵ If the issues raised by Riffin in his District Court lawsuit somehow found their way to the Board, the agency would then determine how, where, and when to address them. Even the City et al. do not speculate on any of these issues to establish relevance and need in the present proceedings.

illegally transferring the line of rail, and attempting to demolish⁶ the Embankment, should be denied because those issues are irrelevant to any issue pending in the case. The City et al. have been undeterred by a decision of the full Board, and continue to seek to use discovery in these proceedings to pursue their conspiracy theories.

The City et al.'s Motion Brief is replete with erroneous information designed to establish relevancy where none exists. At page 7, for example, the City et al. claim that the LLCs (and Conrail) have "acknowledged that abuse of the OFAS process is relevant." For the LLCs, nothing could further from the truth. The LLCs have claimed the City intends to file an abusive OFA because the City has no plans for continuing rail service on the Embankment. That issue is being litigated in the Superior Court of New Jersey in a challenge to City ordinances authorizing it to file and finance an OFA. The issue of the City's own OFA abuse may arise if and when the City files its OFA—if permitted to do so. That does not mean, however, that the City's plan to file an OFA for non-rail purposes is the proper subject of discovery. The LLCs have never sought discovery in these proceedings from the City concerning its anticipated abuse of the OFA process.

The City et al. then claim that discovery is appropriate because nearly thirty years ago, the former manager of the LLCs sought to use an OFA to get

⁶ Whether the LLCs may demolish the Embankment is the subject of a lawsuit that was filed in the Superior Court of New Jersey in 2008. 212 Marin Boulevard, LLC et al. v. Historic Preservation Commission, Jersey City Zoning Bd. Of Adj., docket no. HUD-L-2451-08. That case has been stayed pending outcome of these proceedings before the Board. Thus, the City et al.'s accusation of an attempt to demolish the Embankment is improper. No demolition can or will occur for so long as the matter is in court.

property from Conrail for development. Motion Brief at 7. The City et al. never rationally explain what relevance that has to do with its discovery demands.

Next, the City et al. claim, “Moreover, this case involves at heart an illegal de facto abandonment of a line containing an historic asset (the six block long Harsimus Embankment) that is supposed to be protected under, inter alia, section 106 of the National Historic Preservation Act.” Motion Brief at 8. This case does not involve an illegal de facto abandonment. The District Court has already ruled that the Harsimus Branch (from CP Waldo to Marin Boulevard) was transferred to Conrail in 1976 as a line of rail. The Board itself has determined that the Harsimus Branch is an unabandoned line. In response to a separate petition filed by the LLCs, the Board **rejected** the LLCs’ argument that the Harsimus Branch had been de facto abandoned. 212 Marin Boulevard, LLC et al.—Petition for Declaratory Order, docket no. FD 35825 (decisions dated August 11, 2014 and April 24, 2015).

A review of Appendix B to the May 22, 2015 Board decision concerning the appropriate scope of discovery will show unquestionably that the City et al.’s efforts to use discovery to find evidence of conspiracies is improper.

With that backdrop in mind, an examination of the City et al.’s specific requests further underscores the irrelevance of the requests.

Interrogatories – In their response to the first interrogatory, the LLCs provided, without waiving general objections, the date on which Hyman last acted as the manager of the LLCs. In the second interrogatory, the City et al. pose, “Summarize the ‘diagnosed medical condition affecting Mr. Hyman’s

ability to act on the LLCs' behalf.” The City et al., in discovery in these exempt abandonment proceedings, demand the LLCs provide personal, medical information about the former manager. The third interrogatory demands to know the identity of the person making a medical diagnosis and the date that diagnosis was conveyed to Hyman or his wife Victoria (who is the sole member of the LLCs). Putting aside the gross abuse of discovery in a federal railroad abandonment proceeding, and the demand to obtain information protected under the patient-physician privilege, this demand (aside from demonstrating a total disregard for privacy or decency) is irrelevant.

Next, the City et al. demand to know information concerning resignation of Hyman as the manager. It has been represented to the City et al., through counsel of record, that the manager of the LLCs is no longer Hyman. There is no requirement under New Jersey law—the LLCs are formed under New Jersey law—that an LLC have a manager, or that if a manager resigns, a written document must be prepared. N.J. Stat. Ann. 42:2C-37(c)(5) (providing that a manager may resign or be removed by a majority of the members at any time, and not requiring any specific form or written notice to effect resignation or removal of manager). In these proceedings, the LLCs are represented by counsel. Therefore, the City et al.'s fifth interrogatory demanding to know the identity of the current manager is irrelevant and improper. Counsel speaks for the LLCs in these proceedings.

Next, the City et al. demand to know the identity of Hyman's lawyer in these proceedings. Hyman is not a party. The interrogatory is based on a false premise, and is irrelevant on that basis and otherwise.

Then, delving even deeper into objectionable, irrelevant, and private information, the City et al. demand to know information about whether Hyman has executed a power of attorney. The relevance of whether the former manager, who is not a party to these proceedings, has signed a power of attorney is unexplained. No possible relevance could be found for demanding such information in these proceedings.

Finally, the City et al. demand to know what steps have been taken "to prevent Mr. Steve Hyman from taking actions in connection with [these proceedings] or other proceedings or civil actions relating to the Harsimus Branch or any property adjacent thereto." To the extent the City et al. demand discovery about other civil actions or proceedings the irrelevance is clear. To the extent the interrogatory relates to these proceedings, the LLCs have explained that Hyman is no longer the manager. Further information about what "measures" have been taken to restrain Hyman is entirely irrelevant and inappropriate. In fact, having to address a discovery demand in an abandonment proceeding before the Board that seeks this information is outrageous. Such requests should never have been made.

Requests for Admissions – The City et al.'s requests for admissions concern representations by the LLCs and the Hymans that they have not and will not support Riffin's OFA. Discovery on these matters is irrelevant. If and

when Riffin files an OFA, and he describes his plans, he will describe his project.⁷ For their part, the LLCs have stated in various filings that they oppose all OFAs. The LLCs have offered to stipulate that they will not assist Riffin's OFA, but the City et al. want precise language. The City et al. cannot demand discovery into an irrelevant matter because they are dissatisfied with the proposed stipulation. Nor can they demand the LLCs declare their future position on an issue, proposing severe penalties if the LLCs decide to change that position, i.e., forfeiture of their Embankment properties.

As discussed below, the requests for admissions are also improper because the City et al. have not asked the LLCs to stipulate to facts, but to make representations concerning future conduct - whether the LLCs intend in the future to reverse course and support an OFA. Also, the City et al. have demanded that the Hymans, non-parties, also personally respond to the requests for admissions. 49 U.S.C.A. § 1114.27.

Document Demands – The City et al.'s document demands likewise delve exclusively into irrelevant materials. The first demand asks for all “documents” relating to the “disposition of property in the Harsimus Branch and potential or actual lawsuits or regulatory disputes concerning the Harsimus Branch in whole or in part, or relating to [these proceedings], other than legal proceedings filed with the [Board in these proceedings].” On its face, the demand asks for matters that do **not** involve matters before the Board. What possible relevance

⁷ In these proceedings, Riffin has provided a preview of his OFA, which includes a plan to use the LLCs' Embankment parcels for rail service, which, Riffin claims, would completely make those properties available for use by the LLCs. Riffin's plans are fanciful, at best, and the LLCs want no part of them.

could matters pending before other tribunals have to these proceedings? Also the Board ruled on May 22, 2015, that document demands relating to the “disposition” of property is irrelevant. Such request is also overly broad.

The second demand seeks any other document relating to the Harsimus Branch received from Riffin that falls outside the scope of demand #1, expressly excluding filings in these proceedings. The irrelevance of that request is clear. The request is equally overly broad.

The third demand relates to financial assistance to Riffin for an OFA or for any other civil action. Again, that request is irrelevant. Even if financial assistance for other matters were provided, such assistance would be irrelevant to any issue before the Board. Further, as OFAs have not been filed, the relevance of any financial assistance to Riffin is not relevant.

Fourth, the City et al. demand “documents” relating to meetings with Hyman and Riffin with the developer of Metro Plaza. The City et al. have no intent to file an OFA for that property, and thus the City et al.’s need for discovery is irrelevant. The City et al. then ask for documents relating to meetings with any other developer relating to any other property. That request is clearly irrelevant and overly broad.

Next, the City et al. ask for documents relating to Hyman’s resignation as manager. The City et al. have been advised of Hyman’s resignation, and have twice been offered stipulations confirming that fact. The City et al. have refused to accept that representation. In any event, the identity of the manager of the LLCs is irrelevant. The LLCs speak through counsel in these

proceedings. If the City et al. have reasons why they want to know the identity of the manager for other purposes, aside from these proceedings, they cannot use formal discovery here to get that information.

Sixth, the City et al. seek documents concerning Hyman's alleged continuing role as manager. The request is irrelevant. The City et al. have been advised Hyman is no longer the manager, and the City et al.'s demands concerning any role have no relevance to whether the Harsimus Branch should be abandoned, whether historical conditions should be imposed, or whether an OFA should be approved.

Then, the City et al. ask for documents relating to any power of attorney or guardianship over Hyman. This request is intrusive, abusive, and irrelevant to the issues to be decided by the Board.

Finally, the City et al. ask for documents relating to the representation of Hyman in these proceedings. He is not a party. The request is improper, lacks any basis in fact, and is irrelevant.

Point III

The City et al. Seeks Discovery from Non-Parties (Mr. and Mrs. Hyman and NZ Funding, LLC)

Many of the discovery demands are directed at Mr. and Mrs. Hyman. They are not parties, and there is no basis to serve interrogatories, requests for admissions, or document demands on non-parties. The Board's discovery regulations are abundantly clear that discovery demands may be served by a party upon another party. 49 U.S.C.A. § 1114.26(a), 1114.27(a), and 1114.30(a).

The City et al. claim that they can serve discovery on the Hymans because a discovery demand served on an entity would include knowledge of the entity's agents. Were one to accept that Mr. and Mrs. Hyman (the former manager and the sole member, respectively) are agents, the City et al.'s discovery is still improper.

There is little dispute that when serving discovery on a corporate entity, the entity must respond based on its knowledge, and cannot refuse to provide answers or documents when those answers or documents are within the control of an agent. Equally true, however, those documents must be within the control of the entity or within the agent's control as agent.

Here, the City et al.'s demands request information concerning Hyman's power of attorney, medical information, and other private and purely personal matters. Hyman's power of attorney is not a document within the control of the LLCs. The LLCs do not have any corporate knowledge of Hyman's personal medical condition. What the City et al. have argued is that Mr. or Mrs. Hyman are agents of the LLCs, and therefore all matters within their personal knowledge, as opposed to their knowledge as agents of the LLCs, must be disclosed.

To illustrate, a plaintiff in a lawsuit could serve demands for production of corporate bank records. The agent of the corporation would be required to provide those documents, subject to any objections. The plaintiff could not, however, demand that the corporate defendant provide the agent's personal bank records. Such a demand would have to be made on the agent in his

personal capacity, and not as an agent. To accept the premise that a party could demand, through discovery on an LLC, personal information about the LLC's agent would completely disregard corporate form. The individuals who serve in a corporate capacity are not the property or the business of the company, especially after their service ends.

Furthermore, the City et al. demand that the Hymans—non-parties—respond to request for admissions. It is one thing for the LLCs to admit or deny facts, assuming the requests are proper (which here, they are not). It is quite another thing to demand that the member and former manager of the LLC also admit or deny facts not in their capacity as agents, but in their personal capacity.

Discovery must be limited to demands on the LLCs, not their member and former manager in their personal capacity. The City et al. must not be allowed to use discovery on the LLCs as a means of prying into the personal affairs of the Hymans.

Point IV

The Identity of the LLCs' Manager is Beyond the Scope of Discovery, and Demands for Detailed Information about the Medical Condition and Power of Attorney of a Non-Party is Clearly Designed to Embarrass, Harass, Intimidate, and Cause Delay

The relevant issues before the Board are whether the Harsimus Branch should be abandoned, whether any historical conditions should be imposed, and whether any OFAs should be approved. The LLCs, as owners of the fee simple interest over which a segment of the Harsimus Branch runs, have been

granted intervenor status. In these proceedings, the LLCs are represented by counsel.

The LLCs' facts, positions, and arguments are presented to the Board through counsel. The identity of the LLCs' manager is irrelevant. Who makes the decisions on behalf of the LLCs does not relate to any issue. If the Board has any concerns over the authority of counsel to represent the LLCs, the Board can make inquiry; however, no legitimate ground exists for such inquiry, nor has there been any issue raised before the Board into these areas.⁸

The City et al.'s effort to interject the personal medical condition and the question of power of attorney or even guardianship has nothing to do with any relevant issue. It is reasonable to conclude that the City et al.'s purpose for serving discovery on these highly personal, private, and irrelevant topics is to harass, embarrass, and intimidate the Hymans. Mr. Hyman has resigned as the manager. Disclosure of a specific medical diagnosis, the name of the treating physician, the date the diagnosis was made, and whether Mr. Hyman has signed a power of attorney serves no legitimate purpose. Certainly there can be no purpose raised in good faith in this railroad abandonment action for placing the medical condition of the LLCs' former manager into issue.

The City et al.'s Motion Brief offers a glimpse into their true motives. The City et al. refer to a civil rights lawsuit the LLCs filed against the City. That matter has been stayed by the Superior Court pending resolution of all federal proceedings. One may surmise that the City, angry at being sued for civil

⁸ Fanciful and speculative conspiracy theories raised by the City et al. notwithstanding, the Board is not in the business of managing the LLCs or Hyman's private, personal health issues.

rights violations, seeks to continue that same course of conduct by using discovery in these proceedings to harass and embarrass the Hymans.

The request to compel responses to discovery should be denied.

Point V

The City et al. Improperly Demand The LLCs Admit to Future Conduct

The City et al.'s requests for admissions are improper because those requests do not ask the LLCs to admit or deny a fact. Instead, the City et al. demand that the LLCs (and the Hymans) stipulate as to future conduct. To illustrate, stating that the LLCs will not assist Riffin's OFA in the future is not a fact. It warrants future conduct.

The City et al. had the opportunity to get the LLCs' stipulation that they would not support Riffin's OFA, financially or otherwise. The City et al. refused to agree to a reasonable stipulation, preferring instead to file more irrelevant discovery demands and more motions. The LLCs oppose OFAs, but are not prepared to respond to improper discovery requests simply to placate the City et al.'s unsubstantiated and irrational concerns that the LLCs will support restoring freight service on their Embankment properties. Irrational demands do not justify themselves when rational litigants object to their relevance, and there is clearly no need for any of them.

Point VI

The City et al. Should be Sanctioned for Abusing Discovery under Board Regulations in these Proceedings

This motion is not the first occasion when the LLCs had to oppose the City et al.'s efforts to delve into matters well beyond the boundaries of relevance. This time, however, the City et al. have sought discovery to provide information concerning another lawsuit pending in a District Court that the City et al. are not even parties to; into matters concerning the personal health of a former manager of the LLCs; and into unsubstantiated, irrelevant conspiracy theories.

Pursuant to 49 U.S.C.A. § 1114.21(c), the Board can sanction parties who abuse procedures. That regulation provides, in part:

Upon motion by any party, by the person from whom discovery is sought, or by any person with a reasonable interest in the data, information, or material sought to be discovered and for good cause shown, any order which justice requires may be entered to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding. Relief through a protective order may include one or more of the following:

- (1) That the discovery not be had;
- (5) That certain matters not be inquired into or that the scope of discovery be limited to certain matters;

The LLCs should not be harassed by the City et al. by the formal process of discovery. The May 22, 2015 Board Decision provided the City et al. with

the entire discovery it needed relating to the relevant issues. The City et al., both through this motion and the motion practice involving Riffin, have demonstrated that for so long as this matter is pending—and by extension until the Board sets a schedule for filing OFAs and completing the historical review—the City et al. will continue to harass the LLCs with discovery requests. The present discovery requests probing into patently irrelevant matters including the personal, private medical history of a non-party and desperately looking for a scintilla of proof of a conspiracy, are the definition of annoyance, embarrassment, and oppression, and seeking to raise inappropriate matters into these proceedings.

Accordingly, as an adjudicated abuser of discovery, the City et al. should be barred from serving any more discovery demands on the LLCs. Recognizing that matters relevant to these proceedings could, in theory, arise that would justify discovery, the City et al. should be required to file a motion for leave to serve discovery. Such a procedure would relieve the LLCs of the burdens and impositions of having to respond and object to more City et al. discovery demands, without the Board having first pre-cleared the appropriateness and relevancy of the proposed demands.

The LLCs submit that requiring the City et al. to seek permission to serve specific demands before forcing the LLCs to respond is fair, reasonable, and appropriate given the City et al.'s misuse of discovery in the past and in this motion. Such relief should be deemed appropriate under 49 C.F.R. § 1114.21(c).

Conclusion

The Board has already concluded that the topics the City et al. seek discovery on through this pending motion are overly broad or irrelevant or both. The City et al.'s discovery is simply an attempt to pursue irrelevant conspiracy theories before the Board. The City et al.'s motion should be denied.

Respectfully submitted,

S/Daniel E. Horgan

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300 Lighting Way
Secaucus, New Jersey 07094
Phone: 201-330-7453
Counsel for LLC Intervenors

DATED: October 5, 2016

List of Exhibits

- A. E-mail exchanges between Daniel E. Horgan, Esq. (counsel to LLCs), and Charles Montange, Esq. (counsel to City et al.), including attachments thereto, dated from August 1, 2016 to August 11, 2016
- B. Correspondence from Daniel E. Horgan, Esq. (counsel to LLCs), to Charles Montange, Esq. (counsel to City et al.), including all attachments thereto, dated September 1, 2016
- C. E-mail exchanges between Daniel E. Horgan, Esq. (counsel to LLCs), and Charles Montange, Esq. (counsel to City et al.), including attachments thereto, dated from September 1, 2016 through September 20, 2016
- D. Affidavit of Eric Strohmeier, dated September 7, 2016, filed in Riffin v. Forest City Ratner Cos. et al., United States District Court for the District of New Jersey, docket number 2:16-cv-04433-ES-JAD (filed September 13, 2016)

CERTIFICATION OF SERVICE

I, Daniel E. Horgan, hereby certify that I have caused a copy of the foregoing to be served by First Class Mail upon those on the attached Service List by having same deposited with the U.S. Postal Service on October 5, 2016.

S/Daniel E. Horgan

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Phone: 201-330-7453

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Mike Greely
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Andy Hamilton
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Exhibit A

to

Reply to City et al.'s Motion to Compel Discovery from
LLC Intervenors
(Interrogatories, Document Demands, and Requests for Admissions)

And

Cross-Motion for Sanctions Pursuant to 49 C.F.R. § 1114.21(c)

By the LLC Intervenors

In

STB Docket No. AB-167 (Sub-No. 1189X)
CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
HUDSON COUNTY, NJ

STB Docket No. AB-55 (Sub-No. 686X)
CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No.306X)
NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

**E-mail exchanges between Daniel E. Horgan, Esq. (counsel to
LLCs), and Charles Montange, Esq. (counsel to City et al.),
including attachments thereto, dated from August 1, 2016 to
August 11, 2016**

Subject: Re: Motion before Judge Dring

Date: Monday, August 1, 2016 at 3:32:12 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

To: Mr. Horgan

1. As of this time, I have still not received anything from Riffin. I do not engage in misleading decisionmakers or, for that matter, my adversaries in legal proceedings.

2. Riffin says he is Hyman's fall back, and in any event is so positioned. He has suggested in federal tribunals that he wants to assist Mr. Hyman in defeating the City, and in acquiring not only the Branch but adjoining properties. You seem to suggest elsewhere that the LLCs do not want to deal with him. There nonetheless has been extensive communication between Mr. Riffin and Mr. Hyman or his reps, which include attorneys other than yourself. City et al would not have to pursue discovery on these matters against either Riffin or the LLCs if your clients would enter into appropriate stipulations excluding the Hymans and any entities under their ownership or control from any relationship with Riffin, directly or indirectly.

Will Steve and Victoria Hyman individually, as well as 212 Marin Boulevard LLC, et al., stipulate on the record in AB 167-1189X that they individually and collectively under no circumstance will provide financing of any sort, in whole or in part, directly or indirectly (through some other entity or individual), for any "offer of financial assistance" tendered by Mr. Riffin or any entity related to Mr. Riffin for any portion of the Harsimus Branch at issue in AB 167-1189X, and that they will not act in any fashion as security or guarantors for any financing for a Riffin or Riffin-affiliated OFA in AB 167-1189X?

Will Steve and Victoria Hyman individually, as well as 212 Marin Boulevard LLC, et al., also stipulate on the record in AB 167-1189X that they under no circumstance will pay a commission to Mr. Riffin, or assign him some form a financial participation, in any settlement with Consolidated Rail Corporation involving property currently owned by Consolidated Rail Corporation other than the Harsimus Branch for actions taken by Mr. Riffin in connection with AB 167-1189X or in state court proceedings concerning the Harsimus Branch?

If interested in pursuing this approach, please get in touch with me to work out the format as soon as possible.

From: Horgan, Daniel
Sent: Wednesday, August 03, 2016 3:49 PM
To: Charles Montange
Subject: Stipulation

Charles, as per our discussion the other day, in aid of settlement of the discovery issue, and in relation to other OFA issues, I am providing you with the enclosed draft of a proposed stipulation. I believe that this comports with what you had in mind in your e-mail to me. Please review it and advise. Of course, this is for settlement purposes only and not to be binding in any way unless and until finalized. I also ask that you not share it with anyone but your co-counsel and the City – to the degree that’s necessary – so that we can get this done without complications. Thanks,

Daniel E. Horgan, Esq.
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dehorgan@lawwmm.com
300 Lighting Way, 7th Floor
Secaucus, NJ 07094
Direct phone: 201-926-4402
Direct fax: 201-863-7153
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Email A-#2, with
attached Stipulation

STIPULATION

212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, 446 Newark Avenue, LLC, and NZ Funding, LLC, (“LLCs”), Victoria Hyman and Steven Hyman, individually, (“Hyman”) and the City of Jersey City (“City”), as parties having an interest in or participating in the proceedings before the Surface Transportation Board in Docket No. AB-167-1189-X (“Proceedings”), have agreed and stipulate as follows:

1. This stipulation is given for the complete resolution of discovery requests by the City for documents, information, and any and all communications between James Riffin (“Riffin”) and the LLCs, Hyman, or their representatives or agents, in these Proceedings, and to exclude any support of Riffin by the LLCs or Hyman as specified herein. Upon the filing of this stipulation, as provided for below, the City shall withdraw as moot its pending Motion to Compel Discovery, now pending before FERC Federal Administrative Law Judge John P. Dring.
2. Without limiting the LLCs’ right to provide further objections to any offer of financial assistance (“OFA”) in these Proceedings, the LLCs and Hyman stipulate that they do not support the reinstatement of rail service on any portion of Harsimus Branch in Jersey City, NJ.
3. The LLCs and Hyman do not and will not support Riffin in his pursuit of an OFA in these Proceedings, and will not, directly or indirectly, provide him with financial or any other assistance concerning the filing of an OFA,

Email A-#2 - Draft Stipulation

including any form of compensation, financial benefit, reimbursement, or payment with respect to the OFA filed by the City for any portion of the Harsimus Branch.

4. Steven Hyman, the former managing agent of the LLCs, has resigned from those positions and no longer acts on behalf of the LLCs. This resignation, in part, was due to a diagnosed medical condition adversely affecting his ability to act on the LLCs' behalf. The LLCs now disclaim and disavow any prior act, statement, or document executed by Steven Hyman to the degree that it appears, or may be construed, to support any action by Riffin in pursuit of an OFA or in any manner related to an OFA.
5. Victoria Hyman is the sole member of the LLCs and on their behalf has authorized her attorneys, Waters, McPherson, McNeill, P.C. of Secaucus New Jersey (Daniel E. Horgan, Esq. and Eric D. McCullough, Esq.) as the sole attorneys and agents for the LLCs in these or any related Proceedings. On behalf of the LLCs, and herself as their managing member, she now disclaims and disavows any prior act, statement, or document to the degree that it appears, or may be construed, to support any action by Riffin in pursuit of an OFA, or in any manner related to an OFA, or otherwise.
6. This stipulation shall be formally filed in the Proceedings for the purposes expressed herein to unequivocally establish that the LLCs do not support, financially or otherwise, directly or indirectly, any OFA by Riffin, and that they will not lend any money, credit, or thing of value to establish financial responsibility on the part of any OFA that may be filed in these Proceedings.

Email A-#2 - Draft Stipulation

7. This stipulation shall not be used or interpreted to otherwise establish or infer any position in these Proceedings, or elsewhere, except as herein specifically set forth.
8. By their signatures to this stipulation Steven Hyman acknowledges his resignation as manager for the LLCs and the medical reasons for that resignation; and Victoria Hyman acknowledges her commitment on behalf of the LLCs, and individually, to offer no support, financial or otherwise, direct or indirect, for any OFA that may be filed by Riffin. She further acknowledges that there are no authorized agents or attorneys in these Proceedings, or otherwise, with authority contrary to her representations and stipulations herein, including Steven Hyman.
9. The City and the LLCs, by and through their undersigned attorneys agree that this stipulation shall only be used in these and any other Proceedings brought with respect to the Harsimus Branch for the purposes of resolving a presently pending motion brought by the City to compel discovery from Riffin, in connection with any OFA filed with the STB in these Proceedings, and in any appeal therefrom.

DATED: ___ August 2016

For the City of Jersey City:

**BY: _____
Charles H. Montagne, attorney**

Email A-#2 - Draft Stipulation

For the LLCs:

BY: _____
Daniel E. Horgan, Attorney

BY: _____
Victoria Hyman, Managing Member

Individually:

Victoria Hyman

Steven Hyman

DRAFT

Email A-#2 - Draft Stipulation

Subject: Re: Stipulation

Date: Wednesday, August 3, 2016 at 5:42:34 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

CC: Jeremy Farrell, Stevie D. Chambers, John Curley, Jason Hyndman, Andrea Ferster

Your approach is somewhat different than I proposed, and presents its own complications, including, for me, even processing it with my clients so I can work on it.

First, I am in no position to agree that my suggestion of a stipulation to you, or your response to that suggestion, is some sort of confidential "settlement" discussion. "Settlement" discussions and agreements relate to the merits of a case, not discovery. I am being accused of dragging matters out at STB, by you in particular, and I have to reserve the right to point to my offer of a resolution on discovery issues, and your response or lack thereof as evidence to the contrary in the event we cannot resolve the matter amicably and quickly.

Second, any language limiting discovery by City et al needs to be limited to discovery requests currently pending at STB. The language you propose seems to relate to any discovery against Riffin or the LLCs at all at STB, and I fear this could even be argued to related state court proceedings. As to the STB proceeding, the discovery limitations to date are objectionable, and we reserve the right to seek information that may lead to admissible evidence on any relevant matter. The stipulation will only render certain matters no longer relevant, not all matters. In addition, you have filed too many suits for me to wish to figure out, or ask anyone to figure out, the implications of a stipulation that impinges on discovery in those suits.

Third, I note that this morning I learned, via Conrail, that Riffin has filed suit against Forest City in USDC for NJ, and that Conrail (or at least one of its involved attorneys) believes Riffin is in league with Mr. Hyman on this. The Riffin suit against Forest City makes some claims that you on behalf of the Hymans have sought to make both in USDC for DC and in arguments to STB in the past. Unless Mr. Hyman is formally under some sort of guardianship (in which case the guardian needs to sign) for Mr. Hyman's relevant affairs, then he (just as Victoria Hyman) needs to represent he will not provide any financial support for Riffin's efforts, directly or indirectly, in connection with the Harsimus Branch. If he is not under a formal guardianship but in fact should be, then there may be an impediment to being able to do business with him, the LLCs, Victoria, or any representatives of same, in connection with the Harsimus Branch dispute. The reason is simple: counterparties such as City et al, and tribunals such as STB, will not know whether Mr. Hyman will acknowledge much less be legally bound by his undertakings. He could disavow them, or have them disavowed, on grounds of being incompetent.

Fourth, I will need to share any proposal with the Embankment Coalition as well as counsel (presumably you mean Andrea) and the City. I note that the draft stipulation in fact does contain sensitive information which you have requested I not so broadly share. To honor this request, to the full extent my email program permits, I am only copying attorneys for RTC and the City on this response, and I am attempting to avoid forwarding your attachment to anyone. (If I do, they are asked not to use it publicly.) But I cannot move forward with you on this basis. So count this as an opportunity to withdraw your email attachment in the next 24 hours, or I will feel free to use the attachment however I feel

appropriate.

Finally, I plan to move to strike Riffin's latest (which I have not yet received from him), and any stipulation needs to be achieved sooner rather than later. Again, this is not a "settlement" negotiation, but I will give you 24 hours to withdraw what you sent me because of sensitive information which it contains. There is too much litigation, and threats of litigation, between your clients (including some litigation evidently by your clients in which you are not involved) and City et al for me to agree to constraints on discovery without disclosure to them for review of all ramifications. I suggest you view the stipulation as a vehicle to render certain discovery irrelevant or moot, and not as a vehicle to wall it off at STB or perhaps elsewhere.

Email A-#3, continued

Subject: Re: Stipulation

Date: Thursday, August 4, 2016 at 7:36:37 AM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

BCC: McCullough, Eric

We should discuss by phone today before doing anything either way. I will re-read your message this am and be prepared to discuss. Please call as the next step. Thanks

Sent from my iPhone

Subject: Re: AB 167-1189X, draft stipulation

Date: Friday, August 5, 2016 at 7:25:44 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Charles, attached is a detailed note (not to make this e-mail run on) that explains our thoughts on your latest draft, along with a black-line (or some other color-depending on your computer) that graphically shows what we would propose to change to get this done.

Please review the note, the black-line, and let us know after you consult with your clients. Have a nice weekend.

Dan Horgan

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Dear Charles,

Thanks for the markup of our draft. We are attaching a black-line set of suggested changes, in keeping with our joint effort to reach an agreement that will be acceptable to our respective clients, the LLCs and the City.

To make this somewhat easier, here are the reasons for our changes to your re-draft:

- We deleted RTC and the Coalition because they are not OFA applicants. We understand that they are parties, but they are not sponsors of any re-institution of rail freight service. Not being directly involved in that, and not having filed any notice of intent to OFA, they are outside the scope of the Stip.
- There was duplication on the language as to how the Stip is to be construed. We simply deleted duplicative language.
- Since Steven Hyman and Victoria Hyman are collectively defined as “the Hymans” we kept it that way throughout by referring to them jointly as “the Hymans”. There are some places where they are referred to separately, but that is due to the context.
- Since there is still some controversy as to whether all of the Harsimus Branch is a regulated line of rail (our part is, of course, as per the Special Court), we deleted the statement that it was all regulated. We do not want to use this Stip to make statements or arguments beyond the limited scope of Riffin’s OFA and related discovery, so it doesn’t belong.
- At the top of page 2, we deleted language as to what Steven or Victoria may have done in the past. The reason for this is simple: it doesn’t matter. They are disclaiming all things that could possibly be construed as pro-Riffin. We can make forward looking statements and commitments, and do just that without reservation. But given Steven Hyman’s condition, of which you are generally aware, we have no choice but to avoid any and all disputes as to what he may or may not have done in the past, and we will not subject him to the rigors of litigation. For that he is not up to it mentally or physically, and has not been for some time. However, we understand your concerns with Riffin’s OFA. Remember that the STB has said that OFAs will be judged in the future if, as, and when they are filed with the STB. So to address future OFAs we have provided the strongest and broadest commitments that we will not help or assist Riffin, and adopt your language that we will not underwrite his efforts. That is sufficient for any issue concerning his OFA.
- Paragraph 3 has been adjusted to clarify that Steven Hyman has resigned, without any suggestion of looking back – see above.
- We actually strengthened the disclaimer in paragraph 3 by adding language.
- Your paragraph 6 has been deleted in its entirety. We will not make demands on Riffin, and don’t feel that it’s appropriate to have that sort of agreement as to how the LLCs conduct themselves going forward in litigation. You had asked that we not do certain things, and we’ve agreed, but we decline to get into any disagreements between the City and Riffin over OFAs. Our position is that we’re opposed to all OFAs, and have made that

Email A-#5, attached note, page 1

clear. By doing it this way, we avoid any possibility of future hair-splitting over where we stand on this issue, what we may be obligated to do in some future circumstance, and whether we owe the City (or anyone else) any obligations with respect to their competition with Riffin. We don't.

- In the new paragraph 6 (your old paragraph 7) you had added language that would permit the City to continue discovery in future litigation. Giving full consideration to circumstances where that may be appropriate, we added language to clarify that such discovery would not be a new flavor of what we are disposing of here. This seems like a reasonable compromise.
- A somewhat similar compromise is reflected in the language at the end of the new paragraph 9, at the end of the document, concerning how the Stip may be used.

We think that all of this should advance our joint efforts to reach the compromise that you had initially suggested. Like you said to us when you sent your last version, this proffered language, and certainly any final document, is subject to our client's review and approval. However, we feel that where we are is certainly within the scope of what we have been authorized to advance with you.

Please take a look at this, confer with the City, and let us know. If you feel changes are needed, could you please send us a black-line of this version. That makes it easier (and quicker) to review.

We also note that Judge Dring has now had the City's fully submitted discovery motion for a week or so. We should try and get this done, if we can, so that we don't waste his time working on a decision if we can avoid the need for him to decide by stipulation. Thanks,

Email A-#5, attached note, page 2

STIPULATION

212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, 446 Newark Avenue, LLC, and NZ Funding, LLC, (“LLCs”), Victoria

Hyman and Steven Hyman, individually, ~~{(Victoria and Steve Hyman are collectively referred to herein as “the Hymans”)~~ and the City of Jersey City (“City”), ~~Rails to Trails Conservancy (“RTC”), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (“Coalition”)~~ ~~[City, RTC and Coalition are collectively referred to herein as “City et al”]~~, as parties having an interest in or participating in the proceedings concerning Offers of Financial Assistance (“OFA”) before the Surface Transportation Board in Docket No. AB-167-1189-X (“Proceedings”), have agreed and stipulate as follows:

~~1The following stipulations shall not be construed to limit the LLCs’ right to object to any offer of financial assistance (“OFA”) in these Proceedings by parties other than Riffin.~~

1. This Stipulation shall not be construed to limit the LLCs’ ~~or the Hymans’~~ right to provide further objections to any offer of financial assistance (“OFA”) in these Proceedings. Nothing herein obligates the LLCs ~~or the Hymans~~ to support the reinstatement of rail service on any portion of Harsimus Branch in Jersey City, NJ, by any party.
2. The LLCs, ~~Victoria Hyman~~ and ~~Steven the~~ Hymans do not and will not support, ~~and indeed will oppose,~~ any OFA by James Riffin or any person or entity affiliated with James Riffin in any proceedings involving the Harsimus

Email A-#5, LLCs' revisions to City draft Stipulation

Branch, ~~a line of railroad regulated by the Surface Transportation Board,~~
including any OFA filed by said Riffin in AB 167-1189X. ~~In addition, the~~
~~LLCs, Victoria Hyman and Steve Hyman have not supported or assisted, and~~
~~will not support or assist, James Riffin, directly or indirectly, in any efforts by~~
~~Mr. Riffin to secure any portion of the Harsimus Branch for himself or others.~~

The LLCs, ~~Victoria Hyman,~~ and ~~Steven the Hymans,~~ ~~have not and~~ will not
provide Mr. Riffin with any financial or any other assistance ~~leading to for~~ the
filing of an OFA, or to satisfy terms and conditions set by STB in an OFA
proceeding, involving the Harsimus Branch. The LLCs, ~~Victoria Hyman,~~ and
~~Steven the Hymans~~ will not provide any form of compensation, financial
benefit, reimbursement, or payment to Mr. Riffin, or any other assistance to
Mr. Riffin (including, but not limited to) legal assistance, expert witness
assistance, commissions, or ownership interests in real estate) in connection
with, or arising out of, any civil litigation or appeals or petitions for review
brought by Mr. Riffin in connection with the Harsimus Branch or properties
adjoining the Harsimus Branch.

3. Steven Hyman ~~has resigned as, although formerly~~ the managing agent of the
LLCs, ~~has resigned from those positions~~ and no longer acts on behalf of the
LLCs. This resignation, in part, was due to a diagnosed medical condition
adversely affecting his ability to act on the LLCs' behalf. The LLCs ~~and the~~
~~Hymans~~ now disclaim and disavow any prior act, statement, or document
executed by Steven Hyman to the degree that it appears, or may be
construed, to support any action by Riffin in pursuit of an OFA, ~~that is or~~

Email A-#5, LLCs' revisions to City draft Stipulation

appears to be in conflict with any forward looking promise or commitment made herein, or that is in any manner related to support of an OFA, or in connection with any civil litigation, appeal, or petition for review filed by Riffin in connection with the Harsimus Branch or property adjoining the Harsimus Branch.

4. Victoria Hyman is the sole member of the LLCs and on their behalf has authorized her attorneys, Waters, McPherson, McNeill, P.C. of Secaucus New Jersey (Daniel E. Horgan, Esq. and Eric D. McCullough, Esq.) as the sole attorneys and agents for the LLCs in these or any related Proceedings. On behalf of the LLCs, and herself as their managing member, she now disclaims and disavows any prior act, statement, or document to the degree that it appears, or may be construed, to support any action by Riffin in pursuit of an OFA, or in any manner related to an OFA, or otherwise.
5. This stipulation shall be formally filed in the Proceedings for the purposes expressed herein to unequivocally establish that the LLCs and the Hymans do not support, and will not support, financially or otherwise, directly or indirectly, any OFA by Riffin, and that they will not lend, pledge, or guarantee any money, credit, or thing of value to establish financial responsibility on the part of any OFA that may be filed in these Proceedings.

~~6. City et al, the LLCs and the Hymans collectively and individually request that James Riffin withdraw from AB 167-1189X, withdraw all pending litigation concerning the Harsimus Branch, and cease and desist from filing any further litigation or otherwise participating in AB 167-1189X.~~

Email A-#5, LLCs' revisions to City draft Stipulation

7.6. In light of the foregoing stipulations, City ~~et al~~ agrees and stipulates that ~~their~~ its pending discovery request to James Riffin in AB 167-1189X is no longer relevant, or is moot. City ~~et al~~ accordingly agrees to withdraw as moot all pending motions to compel against Riffin in AB 167-1189X. This stipulation shall not constrain City ~~et al~~ from seeking further discovery in any future litigation against City ~~et al~~ by Riffin or by any other party concerning any future action by the LLCs or Hyman; nor shall it limit the LLCs or the Hymans from raising objection to any such request.

8.7. This stipulations shall not be used or interpreted to otherwise establish or infer any position in AB 167-1189X, any related proceedings now or henceforth at the STB, and any civil litigation involving the Harsimus Branch, except as herein specifically set forth.

9.8. By their signatures to this stipulation Steven Hyman acknowledges his resignation as manager for the LLCs and the medical reasons for that resignation; and Victoria Hyman acknowledges her commitment on behalf of the LLCs, and individually, to offer no support, financial or otherwise, direct or indirect, for any OFA that may be filed by Riffin. She further verifies and acknowledges that there are no authorized agents or attorneys in these Proceedings, or otherwise, with authority contrary to her representations and stipulations herein, including Steven Hyman.

10.9. City ~~et al~~, the LLCs, and the Hymans, by and through their undersigned attorneys agree that this stipulation shall only be used in AB 167-1189X, related proceedings before the STB, and civil litigation including appeals or

Email A-#5, LLCs' revisions to City draft Stipulation

petitions for review involving the Harsimus Branch or properties adjoining the Harsimus Branch that may be brought hereafter by Riffin against the City with respect to any issue involving an OFA filed by or on behalf of the City.

DATED: ___ August 2016

For the City of Jersey City:

BY: _____
Charles H. Montange, attorney

For the LLCs:

BY: _____
Daniel E. Horgan, Attorney

BY: _____
Victoria Hyman, Managing Member

Individually:

Victoria Hyman

Email A-#5, LLCs' revisions to City draft Stipulation

Steven Hyman

DRAFT

Email A-#5, LLCs' revisions to City draft Stipulation

Subject: Re: AB 167-1189X, draft stipulation

Date: Tuesday, August 9, 2016 at 3:38:24 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

I have not had a chance to review all of your comments and changes, much less with all of my clients, in part because new facts keep coming to our attention. However, I do wish to get back to you with some important thoughts. I would begin by noting that you did not respond to my concern about clarifying the legal status of Mr. Hyman. You have indicated that he is not competent, although he is not under a guardianship. But as indicated below, he continues to act on behalf of the LLCs. In order to bind himself in a stipulation once he is represented as incompetent, he presumably needs to act through a guardianship (you say there is none) or via a power of attorney previously entered into that authorizes someone to act on his behalf. Moreover, the LLCs and Victoria have to enter into, and publicize, some kind of revocation of any power of Mr. Hyman to act for them. Has Mr. Hyman signed a power of attorney allowing someone to act on his behalf, and if so whom, and may we see it? Have the LLCs and Victoria Hyman executed (much less publicized) a revocation of Hyman's agency for them? If so, may we see it? If the stipulation is intended as a repudiation of Mr. Hyman as an agent for Victoria Hyman and the LLCs, then I am concerned when you say it should be limited to future acts, thus allowing them the benefit of all actions up to the date of the stipulation, for those are the actions into which our discovery is directed. As I indicate below, my clients and I continue to receive reports that Mr. Hyman and Mr. Riffin are working together to abuse STB jurisdiction and remedies to thwart the City. The reports indicate that Mr. Hyman is calling the shots; and that he is acting to benefit himself and with apparent authority the LLCs and his wife. Unless Mr. Hyman's status is clarified as not competent from some stated prior date as to the Harsimus Branch, then I do not see how you render moot or irrelevant discovery into Riffin's dealings with Mr. Hyman irrelevant or moot as to any past period of time. Moreover, if the LLCs and Victoria Hyman will benefit from the Riffin/Hyman actions (at least if successful) now or in the future, the discovery is not rendered moot or irrelevant.

Our discovery interest is based inter alia on the relevance at STB of understandings and agreements between Riffin and Hyman to abuse STB processes/jurisdiction in order to thwart the City and to destroy the Harsimus Branch and section 106 assets within it. These understandings and agreements relate not only to Riffin's ostensible OFA intentions, but also to his involvement in civil litigation invoking STB jurisdiction to thwart the City. I learned this morning on the telephone that Mr. Hyman (at a recent meeting between Forest City and Hyman at which Riffin was present) told at least one principal for Forest City that he (Hyman) had an agreement with Riffin to compensate him (Riffin) out of proceeds derived from success from Riffin's various efforts (OFA or civil litigation against Forest City over STB regulation) to thwart the City in connection with the Harsimus Branch. In addition, Forest City apparently understands the latest suit (filed last week) to be on behalf of Hyman, and already subsidized by him. Another independent source has essentially confirmed essentially all of the above information to me. Local news media say Riffin says he is acting for the Hymans. It appears that the LLCs, Victoria and Steve Hyman are all seeking to draw benefit, and will continue to seek to draw benefit, from Mr. Hyman's actions with Riffin. The proposed stipulation does not appear to alter this equation; it simply seeks to preclude discovery into the relationships giving rise to the benefit. Moreover, the stipulation appears to contradict what others believe as fact in terms of Mr.

Email A-#6

Hyman subsidizing or agreeing to subsidize Riffin's efforts. If Hyman is doing something he stipulates he is not, then what are the consequences? He cannot act to abuse STB remedies simply by claiming he is not.

Finally, notwithstanding your claims that Steve Hyman does not speak for the LLCs or Victoria Hyman, Forest City's attorney says that Steven is calling the shots. He foresees no settlement possibility except on terms dictated by Steve Hyman. Conrail says the same. In short, so far as anyone including you can tell, Steve Hyman is in control, de facto and de jure, of the situation for Victoria Hyman and the LLCs. How can Victoria or the LLCs stipulate to the contrary?

I believe that your clients need to clarify the agency status of Mr. Hyman for themselves, and also who has power to bind Mr. Hyman, including who has a valid power of attorney to bind him if he is incompetent. In the meantime, we feel that the LLCs should turn over to us all correspondence (including emails) and attachments sent to or received by Mr. Hyman or any attorney for Mr. Hyman on which Mr. Riffin is either copied or is a sender or recipient up to the date on which Mr. Hyman is formally disavowed as an agent of the LLCs. A voluntary disclosure of all documents flowing between Riffin and Hyman or his representatives or the LLCs will obviate the need for further formal discovery against the LLCs on this matter.

To the world, including all parties in any of the Harsimus Branch cases including the most recent suit against Forest City, Mr. Hyman has been and is calling the shots, governing the strategy, choosing the tactics (including empowering Riffin) and defining terms of settlement. A stipulation to moot or to render irrelevant our discovery on abuse of process issues needs to deal with Mr. Hyman's apparent and continuing agency.

Email A-#6, continued

From: Horgan, Daniel
Sent: Tuesday, August 09, 2016 4:46 PM
To: C. Montange
Cc: Jeremy Farrell
Subject: Re: AB 167-1189X, draft stipulation

Charles, I assume from the message below, that you and the City have rejected the idea of making a stipulation. Please confirm if that is correct. Judge Dring will then decide your pending discovery motion as submitted.

Second, it's impossible to deal with the hearsay, rumor and innuendo on which you base your statements. Who are these people who report these things to you? Who are the un-named attorneys for Conrail and/or Forest City? If they have any issues or questions about Hyman or the LLCs, please have them call me directly.

Third, as far as your claim that there is any abuse of the STB process, you've been saying that for years, but it's simply not the case. If there is any abuse, it's by the City (and others) in advancing meritless OFA proposals, claims against titles (which by necessary extension would include the title to the Metro Plaza site), and your seeking discovery that the STB has already rejected as irrelevant. We can let Judge Dring at FERC decide your pending discovery motion on the merits, but the innuendo adds nothing.

As far as Steve Hyman's condition, you have seen evidence of that yourself at the day-long, March 2, 2016 meeting with the STB in Washington, and it has been explained to you in some detail since by me. The man is not well, and attempting to make that an issue is regrettable.

As to who is responsible for Mr. Riffin, it should be remembered that it was the City that brought him into this and to the meeting(s) at City Hall with the now disavowed OFA rail shipper, Pace Glass. You know very well that Riffin was an alleged serial abuser of the STB OFA process, along with the City's supposed OFA rail operator, CNJ Rail (A/K/A/ Eric Strohmeyer). Yet the City has repeatedly indicated that its OFA is premised on getting an operator – the only choice seemingly being CNJ.

For the record, we view your accusations as an effort to shift the blame for the City's untenable OFA, irrelevant discovery, and other positions taken by the City at the STB, away from the City and your strategy to Steve Hyman and Jim Riffin. Please provide this response to those to whom you sent the initial message so that they may have the benefit of our reply.

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Email A-#7

Subject: Re: AB 167-1189X, draft stipulation

Date: Tuesday, August 9, 2016 at 6:28:38 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

CC: Jeremy Farrell, Stevie D. Chambers, John Curley, Andrea Ferster, Jason Hyndman

I had not rejected the idea of a stipulation; I asked how it could be done meaningfully since Mr. Hyman is, you say, not competent, but yet he acts for himself and has apparent agency for the LLCs and his wife, as witnessed by Forest City when it recently met with him and Riffin. Your email response seems to go off the wall with allegations in response. Those allegations for the most part have nothing to do with the discovery we tendered Riffin or the pending motion to compel. Failure to respond further should not be taken as an admission of anything. Indeed, most if not all of what you say in your email is plainly false, and if not, then irrelevant or misleading or both. It is not even clear to us that you represent Mr. Hyman in all of his activities in connection with the Harsimus Branch, or speak for him. And since he continues to act with apparent agency for the LLCs and Victoria Hyman, it is not clear the extent to which you represent the LLCs or Victoria Hyman, at least in terms of binding your clients. Your clients should stop conspiring with Mr. Riffin and others directly and indirectly to subvert STB jurisdiction and remedies, including the OFA process.

In short, I offered up the idea of a stipulation in order to obviate discovery; we must conclude that your clients are not in a position to stipulate anything. In a light most favorable to your representations, Mr. Hyman, whom you indicate lacks competence to make business decisions, nonetheless controls the show, and he is now in a position where he cannot or will not be bound to anything meaningful on the Harsimus Branch, even to resolve a discovery matter.

I request that you supply us with the documents exchanged between your clients and Riffin, and now all information bearing on the business competency of Steven Hyman.

From: Horgan, Daniel
Sent: Wednesday, August 10, 2016 12:09 PM
To: C. Montagne
Cc: Jeremy Farrell; Stevie D. Chambers; John Curley; Andrea Ferster; Jason Hyndman
Subject: Re: AB 167-1189X, draft stipulation

Dear Mr. Montagne, This is in response to both of the email messages you sent to me yesterday afternoon, August 9, 2016. Throughout our discussions we have been willing to stipulate no LLC or Hyman support for any OFA, including the one that Mr. Riffin has been given the status to file by virtue of the STB's approval of his notice of intent, which you unsuccessfully opposed. When we began our discussion on the stipulation last week, you were aware that Riffin had filed a civil action in federal court because you mentioned it to me. Despite that knowledge, we proceeded to exchange drafts on the stipulation. However, it now appears that statements from others that you characterize without attribution to any individual, except unnamed representatives of Forest City and Conrail, have changed your position. In our prior discussions you were aware that we were fully willing to address the issue of support for Riffin's OFA, but unwilling to offer up Mr. Hyman as a target for your arguments so that you could challenge his medical condition and abilities. Since you wish to pursue that course based on hearsay allegations, which we categorically deny, we have become doubtful of reaching agreement with you.

Nonetheless, and in light of Judge Dring's August 5th Order Scheduling Oral Argument in Washington on August 24, 2016, we reiterate our willingness to resolve this matter by means of the stipulation that we last sent to you on August 5th. Please review it as an alternative to having the Judge decide the matter, keeping in mind your likelihood of success, etc.

As we anticipate continuing discussions, we will not, however, dignify your unfounded hearsay allegations with specific replies. They are not only irrelevant to OFA discovery before the STB, but

stretch the bounds of propriety. They are certainly not appropriate for consideration on the 24th. But even taking them as an excess of litigation-oriented advocacy, we must comment on the last paragraph of your first email. That paragraph begins "To the world...", which suggests that you, the unnamed attorney for Conrail, and unnamed others, have engaged on a campaign to attribute all of the City's problems and difficulties with its STB proceedings and arguments to Mr. Hyman. The quoted paragraph suggests that such a course, including public statements, extends well beyond the realm of protected advocacy in litigation, and you should cease and desist from making all such statements. Please distribute a copy of this e-mail to all recipients of your two prior e-mails, in addition to any of those listed above, so that they may have the benefit of our replies and this admonition as well. Thank you.

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Email A-#9

Subject: Re: AB 167-1189X, draft stipulation

Date: Wednesday, August 10, 2016 at 1:20:43 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

CC: Jeremy Farrell, Stevie D. Chambers, John Curley, Andrea Ferster, Jason Hyndman

Mr. Horgan, you brought up the medical condition of Mr. Hyman, and now you attempt to hide behind it. Indeed, at this point, it is no longer clear you in fact represent or speak for him, although he continues, so far as any of us can tell, to manage the LLCs. You admonish me not to pursue diligently the interests of my clients against your unfounded allegations against my clients. I should think by now you would get the message that neither they nor I are to be bludgeoned into submission to Mr. Hyman's demands, or those made by you. Any allegations against the interests of my clients and any of your insinuations against myself are hereby denied. Please be assured that my clients are fully apprised of your statements. Incidentally, under the ethics rules of most Bar associations, you are not permitted to communicate directly with my clients, without my permission, which you do not have and which you just did.

Subject: Re: AB 167-1189X, draft stipulation

Date: Wednesday, August 10, 2016 at 1:27:14 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

CC: Jeremy Farrell, Stevie D. Chambers, John Curley, Andrea Ferster, Jason Hyndman

Can we focus on the stipulation, the motion upcoming on the 24th, and just leave Steve Hyman out of this? And if you don't want me to reply to the group you describe as "all of us", leave them out of it. You shouldn't need an audience to address the issues. Thanks,

Email A-#11

Subject: Re: AB 167-1189X, draft stipulation

Date: Wednesday, August 10, 2016 at 1:35:33 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

CC: Jeremy Farrell, Stevie D. Chambers, John Curley, Andrea Ferster, Jason Hyndman

I understood you to have broken off negotiations yesterday when I indicated that it was unclear to me how to handle the fact (which you stipulate) that Mr. Hyman is no longer competent, yet the now undeniable fact that he continues to speak with apparent authority and agency for the LLCs, and in all events is in league with Mr. Riffin, to the point of initiating new lawsuits against other developers in order to obtain concessions from Conrail and the City on the Harsimus Branch. I cannot recommend that my clients forego discovery against adversaries who appear to say one thing while doing another. I do not "pretend."

Email A-#12

Subject: Re: AB 167-1189X, draft stipulation

Date: Wednesday, August 10, 2016 at 2:00:00 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

CC: Jeremy Farrell, Stevie D. Chambers, John Curley, Andrea Ferster, Jason Hyndman

You mis-understood. I did not break off negotiations. And:

- No one is stipulating that Steve Hyman is incompetent – just that he has resigned as LLC manager
- Your “undeniable” facts are based on vague hearsay and are DENIED
- Steve Hyman no longer speaks for the LLCs
- No one here is “in league with Mr. Riffin”
- No one here “initiated new lawsuits against other developers”

So, despite your grave misgivings about all this, can we continue with the effort to stipulate as the STB and Judge Dring have requested?

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Email A-#13

Subject: Re: AB 167-1189X, draft stipulation

Date: Wednesday, August 10, 2016 at 2:26:55 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

Mr. Horgan, first, do you continue to represent Steven Hyman? If not, who does?

Second, if "here" as you use the term in your prior email includes the Hymans, then I am afraid that your statements in the above email, or in earlier emails, are incorrect from the inception, since you previously told me that Mr. Hyman was incompetent. Since this episode (one of others) renders it hard to know when to rely on your statements, it is difficult to make any arrangements with you.

Third, for you to deny that Hyman and Riffin are in league with each other is frivolous footdragging. You previously admitted Hyman acts independent of you anyway. Have you even asked him if he met with Riffin and Forest City reps? The constant churning, the denial of facts, and an overzealous refusal to see any merit in the other side coupled with a tone of belittlement and disrespect to others makes any form of orderly proceeding essentially impossible.

We are not about to stipulate that because you say Hyman no longer manages the LLCs (when by all indications he still does or at least takes actions on their behalf) you and Riffin avoid discovery into the relationship between Hyman and Riffin.

Stop sending emails to my clients without my permission. They complain of inundation (and annoyance).

Email A-#14

Subject: Re: AB 167-1189X, draft stipulation

Date: Wednesday, August 10, 2016 at 3:22:44 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Dear Charles,

- Mr. Hyman is not a party in STB Docket AB-167-1189-X. I and my firm represent the LLCs and Victoria Hyman. Steve Hyman is the former manager of those LLCs. If you wish to direct anything to either the LLCs or anything relating to STB proceedings, please direct those to me. But please don't harass Mr. Hyman directly.
- I have not told you that Mr. Hyman was "incompetent". That's your statement and it is clearly wrong. I have told you that he has resigned as manager for the reasons proposed in the stipulation drafts. I have also told you that he is competent to make those representations. Those are the facts.
- I represent to you that I represent the LLCs. They are the parties in AB-167-8819-X. There has been no question on the representation for years in any forum, state or federal. If you think that someone else represents the LLCs in these matters, please tell me who that is so that we can resolve your concerns, once and for all.
- No apologizes for the tone. Any communications with Steve Hyman as an agent of the LLCs has been made under the attorney-client privilege arising from his position and there is no obligation to answer your questions, as you well know. Please accept that and move on.
- You seem to be saying that you will not accept a stipulation signed by both counsel and the respective individuals in their various capacities. This seems to be nothing other than recalcitrance in the face of an offer to stipulate that you had first proposed, we had discussed in detail, is reflected in several drafts back and forth, and that would resolve your OFA discovery dispute.
- You added numerous attorneys for the City, your client, to prior e-mails, in order to conduct these discussions with a broad audience. Since you have now excluded them, I won't add anyone. However, I presume that you are keeping them fully informed.

Let's get back to the stipulation.

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Email A-#15

Subject: Re: AB 167-1189X, draft stipulation

Date: Wednesday, August 10, 2016 at 4:16:01 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

First, my clients and I need to know with whom we are dealing. So far as I or anyone else with whom I have spoken can tell, Mr. Steven Hyman has always spoken for the LLCs, and continues to call all the shots, including settlement discussions. Do you continue to represent him? If not, who does? This is not an attorney-client protected matter, nor are his communications with Riffin.

Second, I have no wish to pursue a guy who lacks capacity, except when that alleged lack of capacity is being used to advance the interests of my adversaries. Then I must protect the interests of my clients.

Email A-#16

Subject: Re: AB 167-1189X, draft stipulation

Date: Thursday, August 11, 2016 at 4:11:38 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Dear Charles, The reasoning of your last request is a little hard to follow. But in response, we offer the following, with no apologies for repetition of any answer previously given to the same or similar question over the past days:

- In AB-167-1189-X you are dealing with the LLC Intervenors. We represent them. *[See first bullet point from our response of yesterday]*
- Steve Hyman used to be the managing agent, but no longer is. There are no settlement discussions at present. *[See yesterday's second bullet point]*
- We represent the LLCs. This is manifestly evident from the dockets and pleadings filed in numerous actions and proceedings over the years. None of that has changed. *[Yesterday's third bullet point]*
- The STB has already restricted your OFA discovery with respect to the LLCs (which of necessity included Steve Hyman as their manager) telling us that the materials you sought were outside the scope of relevance to the proceedings. That being the ruling, there is no need to reply to questions that are not relevant.
- Second, we are not discussing Steve Hyman's "capacity", only the fact that he no longer acts for the LLCs. As to advancing the interests of your adversaries, are you speaking of the LLCs that have consistently opposed your clients at the STB and in related proceedings, or are you speaking of Riffin? You have had fair opportunity to oppose him in the STB proceedings and, in fact, have yet another chance before Judge Dring on August 24th. We see nothing wrong with that.

We have yet to hear from you on the name or names of the individuals who are making the statements on which you have been relying. That includes positions that you attribute to Conrail. We ask that so that we may inquire further of them on these matters. However, that is not terribly important either for right now.

What is important is whether or not you are willing to proceed with stipulating as we had proposed – or at least some of it without all sorts of demands, pre-conditions and questions of "competency". We are fully competent to stipulate, as are our clients. Perhaps we can move forward?

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Email A-#17

Subject: Re: AB 167-1189X, draft stipulation

Date: Thursday, August 11, 2016 at 4:48:34 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

Mr. Horgan, I suggested stipulations as a means to abate the discovery controversy with Riffin. You cut off negotiations on Aug 9 with some intemperate remarks and declarations, and since have only cut back on what you will stipulate. Moreover, it appears to City et al that what you now profess to stipulate is contrary to what you have told me as to the facts, and also contrary to what your clients are in fact doing. Your stipulation seems designed solely to cut off our inquiry into what your clients through Mr. Hyman have done or are doing with Riffin, or have instigated with Riffin, yet allow your clients all the benefit of Riffin's misuse of STB processes in league with Mr. Hyman for, as Riffin repeatedly says, your clients.

STB's prior rulings dealt with discovery matters as they existed in 2014-15. STB has not cut off discovery but assigned disputes to an ALJ. Over a year has lapsed. During that time, the LLCs' manager has evidently entered into some form of agreement with Riffin to subvert STB jurisdiction and remedies. City et al reserves all rights of discovery, including against the LLCs and all affiliated with them.

It would be a denial of due process to limit City et al from discovery against Riffin or the LLCs (or Conrail for that matter) on relevant issues. This is not a fast track abandonment proceeding with nothing of import at issue insofar as your clients' maneuvers with Riffin are concerned. Furthermore, it would be error for STB to limit discovery into abuse of the abandonment process by Conrail and the LLCs. The agency should be examining that issue itself independently of what we do, based on the LLCs' own allegations that Conrail acted fraudulently in proceeding without an abandonment authorization and Conrail's response that the LLCs' were well aware of the relevant facts. Fraudulent evasion of STB regulation is a relevant issue, especially in this case involving section 106 assets.

Email A-#18

Subject: Re: AB 167-1189X, draft stipulation

Date: Thursday, August 11, 2016 at 5:11:08 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Charles,

I understand that you will not stipulate. So be it. We certainly didn't cut off anything on the 9th, but that too is irrelevant, and Judge Dring can recommend a decision on the motion as submitted.

As to the rest of this, you keep speculating to create issues where no relevant issue or facts exist, except maybe in the eyes of the City et al. As to your alleged denial of due process and related offenses, you seem to be complaining about the STB and what it's not doing for you or the City et als. That's not the LLCs or even Riffin, so its not our concern.

We'll see you on the 24th in Washington.

Daniel E. Horgan, Esq.

Waters, McPherson, McNeill, PC

dehorgan@lawwmm.com

300 Lighting Way, 7th Floor

Secaucus, NJ 07094

Direct phone: 201-926-4402

Direct fax: 201-863-7153

Cell: 201-926-4402

Email A-#19

Subject: AB 167-1189X -- Harsimus

Date: Thursday, August 11, 2016 at 6:15:16 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

CC: Robert Jenkins, Eric Strohmeier

Mr. Horgan, part of the problem in working out a stipulation with the LLCs (as I originally suggested) that would moot the motion to compel before ALJ Dring is the sometimes contradictory remarks you have made to me in emails and orally, or the failure to respond to concerns, and the confusion that this has raised in terms of preparing stipulations. For example, you wish to stipulate that Mr. Hyman is no longer manager of the LLCs due to a medical condition, but you decline to discuss (at least in writing) whether there is a guardianship, a power of attorney, or a date associated with the diagnosis of the medical condition, or when Mr. Hyman resigned as manager. As a result, we do not know what Mr. Hyman has arranged with Riffin (which certainly still appears highly relevant if Riffin is discharging his part of a bargain or commitment that Mr. Hyman has struck with him while operating at LLCs' agent), when Mr. Hyman's medical problem was first diagnosed, and when Mr. Hyman resigned as manager. In addition, we do not know what management arrangements now exist. Indeed, we do not know if you continue to represent Mr. Hyman, or even can do so if his interests conflict with the LLCs (if they do not, then he would appear still to be acting in agency for them), so the stipulation may not be valid as to him and we need to know whether it is or is not. And the LLCs appear in any event to be taking advantage of -- or at least they are the intended beneficiaries of and are not objecting to -- current actions of Mr. Hyman in league with Mr. Riffin in attacking the jurisdiction of or remedies administered by STB, as manifest in the new civil action against Forest City. Unless the LLCs somehow sever all relationship with Riffin (that would seem to require control over Mr. Hyman's dealings with Riffin which the LLCs so far as we know are not even seeking), discovery of what the LLCs through Mr. Hyman and Mr. Riffin are doing remains relevant and material. I would be derelict not to pursue it. Moreover, you wish to treat the stipulations regarding discovery against Riffin as precluding discovery on these matters against the LLCs as moot or irrelevant. By providing the questions we have about the Riffin-LLCs relationship to your clients, we can arrive at stipulations that are on point in this regard, and at least have some feel for what you wish us to waive further inquiry into. Candidly, the LLCs appear to be a rudderless ship, or if anything, under the guidance of a skipper whom the rest of the ship are trying vaguely to disavow while riding along to see if he still gets them what he wants.

In short, it strikes me that the only way to proceed is formally to tender discovery requests to the LLCs and their reps, now or previous, on the Riffin matters to tie down all the loose ends. City et al are prepared to negotiate stipulations, if possible, that would abate all this discovery, as well as the discovery dispute subject to our motion to compel, on the basis of the issues raised by events involving Riffin and the LLCs. At least some of these matters may be amenable to stipulation. To the extent anything is not, then the LLCs will have to respond to our discovery pursuant to Part 1114.

As a courtesy, and in order to facilitate a resolution in advance of the Aug 24 hearing, here is a copy of our discovery to the LLCs, which was deposited with Fed X for next day delivery. Indeed, if your clients would fully, candidly and expeditiously answer the discovery requests, that would abate the need for our motion to compel as well, for, even as to the document requests, what Messrs Riffin and Hyman communicated to each other

Email A-#20

should be in the possession of both, and none of it is privileged in any way.

Email A-#20, continued

Exhibit B

to

Reply to City et al.'s Motion to Compel Discovery from
LLC Intervenor
(Interrogatories, Document Demands, and Requests for Admissions)

And

Cross-Motion for Sanctions Pursuant to 49 C.F.R. § 1114.21(c)

By the LLC Intervenor

In

STB Docket No. AB-167 (Sub-No. 1189X)
CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
HUDSON COUNTY, NJ

STB Docket No. AB-55 (Sub-No. 686X)
CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No.306X)
NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

**Correspondence from Daniel E. Horgan, Esq. (counsel to LLCs),
to Charles Montange, Esq. (counsel to City et al.), including all
attachments thereto, dated September 1, 2016**

WATERS, MCPHERSON, MCNEILL

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
300 LIGHTING WAY
P.O. Box 1560
SECAUCUS, NEW JERSEY 07096

DANIEL E. HORGAN
MEMBER OF N.J., N.Y. & D.C. BARS

OFFICE DIRECT DIAL: 201-330-7453
CELL and VOICE MAIL: 201-926-4402
E-MAIL dehorgan@lawwmm.com

September 1, 2016

Charles H. Montange, Esq.
426 NW 162d Street
Seattle WA 98177
c.montange@frontier.com

BY E-MAIL & REGULAR MAIL

**RE: RESPONSES & OBJECTIONS TO REQUESTS
FOR THE PRODUCTION OF DOCUMENTS
STB Docket No. AB-167-1189-X**

Dear Charles,

Our responses and objections to your request for documents are enclosed. This letter is intended to provide you with a substantive basis in support of our objections for documents exchanged with James Riffin concerning the Harsimus Branch. Riffin is an interloper, and you yourself have described him as "... an unwarranted, disruptive, and ultimately unfair distraction for City et al and detrimental to the public interest." *September 14, 2015, pg. 9, attached.* We agree, and provide the following discussion in an effort keep Mr. Riffin from becoming a distraction in these proceedings - at least to the degree that he has been enabled to become one already.

As I said to Judge Dring in Washington, we cannot prevent Mr. Riffin from giving you whatever he wants to give you. Our interest in the matter is ensuring that no one takes him seriously (we don't), and that none of his statements or antics be deemed relevant and thereby consume any further time or resources in this abandonment matter before either the STB or Judge Dring.

The waste of time and resources is illustrated by Mr. Riffin's response to Judge Dring's Order that: "Mr. Riffin will provide City et al. and Consolidated Rail Corporation with all e-mail communications between him and the LLCs that Mr. Riffin retains in his possession." We make no comment whatsoever on your agreement with him, or his efforts to fulfill his part of the bargain. We do not waive our filed objections to the relevance of any of it.

Focusing, instead, on the correspondence and documents you have asked the LLCs to provide, and without waiving any of our stated objections, we offer the

following context for Mr. Riffin's unrelenting efforts to insert himself into the Harsimus abandonment.

Mr. Riffin has requested in the past that Mr. Hyman take various courses of action that, in Mr. Riffin's view, would provide a successful resolution to disputes concerning the Sixth Street Embankment properties. Those courses have been to seek STB authority to acquire the Harsimus Branch as a railroad and operate it as such; file an Offer of Financial Assistance; undertake various settlement proposals involving Conrail and the City; and, to do all of the foregoing in concert with Mr. Riffin. All such proposals have been rejected and none have been pursued. The fact that Mr. Riffin makes a proposal does not establish that anyone has agreed to join with him, to follow his course or his lead, or to support his efforts in any way. Nonetheless, he persists with unrelenting vigor.

Exhibit A is an e-mail exchange of March 7-8, 2015 that begins with Riffin's unsolicited comments upon something the LLCs filed with the STB. As indicated in my reply, he had provided his views, suggestions, entreaties, and warnings in a number of memorandums, the gist of which you can see from my response on the 8th. All of his positions were unequivocally rejected. In other words, there is no agreement of any sort with him; just the opposite. He is, as you describe him, an unwelcome interloper, at best. Please note that my reply was sent to Eric Strohmeyer, from which I believe you may have been made aware of the LLCs' position.

Riffin frequently supports his proposals with his own version of legal reasoning, interpretation of STB precedent, and versions of the facts based upon discussions with others, including Eric Strohmeyer. Because Riffin makes a factual statement, or draws a legal conclusion, does not make it accurate or valid. He has opined, incorrectly, that parties in the proceedings would take certain actions. He has predicted quick action by the STB. He has formulated goals for his own benefit and urged the parties to adopt them. In all these things he has been singularly wrong. Neither the parties, nor the STB, have conducted these proceedings in the realm of his parallel universe, and the LLCs certainly do not intend to do so, now or in the future.

Exhibit B is an e-mail sent by Mr. Strohmeyer to Mr. Riffin, and copied to you, others, and me as indicated. In it, Mr. Strohmeyer laments that Mr. Riffin has made allegations creating a rift between CNJ Rail and the City, citing to your STB filing of four days earlier. We have attached the cover page and pages 6 and 7 of that filing. Also attached, as part of this Exhibit is our letter of June 10, 2015 that you reference in your ninth footnote that disclaims to the STB's Director of Proceedings any and all involvement between the LLCs and Riffin. Your filing cites this letter in support of your very strong accusations against Riffin, whom you derisively describe as the Shakespearean clown, Falstaff. Apparently, we all feel the same about Mr. Riffin, or

at least should in the present circumstances. Believing anything that he says is surely a very slippery slope to ruin and embarrassment at the bottom.

Riffin is relentless, even in the face of rejection. Believing firmly in his own facts and conclusions (which are not always wrong), and, then leading himself on to false premises and conclusions, he persists. None of this, of course, is in any way relevant to any issue pending before the STB, even though Riffin may himself believe that somehow it is relevant. The LLCs are not guided by Riffin's theories, goals, or suppositions. They are distinctly not what these proceedings are about. While Riffin would clearly delight in leading us all astray into his realm of railroad law and procedure, we decline to follow, or participate. What everyone needs to recognize is that following Riffin down his chosen path is not a proper choice in these proceedings, and leads only into Riffin's realm, but does not address or resolve any issues before the STB.

Exhibit C confirms that there should be no doubt about Mr. Riffin. After our categorical rejection of him seven months earlier (Exhibit A), and heavy criticism by yourself and Strohmeier in September (Exhibit B), Mr. Riffin sought to make a much bigger problem in the following month of October, 2015 by sending a 15 page memo to third parties, essentially threatening them with the same legal theories and arguments that the City has made against the LLCs. Now, he has followed through on his threat contained in that memo by actually filing an action in the U.S. District Court for the District of New Jersey, Docket 16-cv-4433. A motion for dismissal from all defendants is pending, and, if granted, we can expect Mr. Riffin to continue, as he always does, but this time ensnaring more third parties and, inevitably, compounding the complexity of the Harsimus disputes and protracting any resolution. That's what he does, as you know all too well.

We see no possibility that anything that Mr. Riffin says or does benefits the resolution of these Exempt Abandonment Proceedings. His lemons-to-lemonade approach only serves his own world-view. Therefore we should avoid bringing him or his actions into these proceedings. We would like to discuss this with you in furtherance of the obligations placed upon counsel, and strongly emphasized by Judge Dring most recently, to make every good faith effort to resolve disputes without resorting to discovery motions. Please consider these points when reviewing our objections to document production, and the utter futility of engaging Mr. Riffin in any further proceedings, in any fashion. His presence is toxic to resolution and should be avoided entirely.

Without agreeing that any of Riffin's communications are in any way relevant to these proceedings, especially when those communications purport to analyze the options for the Harsimus Branch or the Embankment, the LLCs are prepared to stipulate that they

have not and will not join with Riffin in any pleading or proceeding before the STB concerning the Harsimus Branch and will not support the OFA proposed by him that includes either the Harsimus Branch or the Metro Plaza property.

Please follow up with us when you have digested all of this, and considered everyone's experience with Jim Riffin in STB proceedings, including your own.

Thank you.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

BY: 
DANIEL E. HORGAN

CC: James Riffin
Eric Strohmeyer
Robert M. Jenkins, III, Esq.
Adam Sloan, Esq.

EXHIBITS A, B and C attached

EXHIBIT A

to

Letter to Charles H. Montange, Esq.

September 1, 2016

Item: E-mail exchange, 2 pages

Subject: Letter to Craig Keats. Decision time

Dates/Author: First – March 7, 2015/ James Riffin

Last – March 8, 2015/ Daniel E. Horgan

Subject: Re: Letter to Craig Keats. Decision time

Date: Sunday, March 8, 2015 at 11:38:26 PM Eastern Daylight Time

From: Horgan, Daniel

To: jim riffin, Steve Hyman, Eric Strohmeyer

Dear Jim, I've read your memos. Since you are part of CNJ Rail, and CNJ has filed an adverse position to the LLCs (the CNJ Rail OFA notice of intention), you shouldn't be surprised that we don't want to share our strategies with you. We certainly don't want it to be said that we waived any privileges either.

With that, thanks for your thoughts. There are some clear, initial problems. First, funding Oak Island or anything like that would not be viewed by Chicago Title as consistent with defending title.

Second, the OFA suggestions have several serious flaws. Most serious is that there are no shippers – much less any viable shippers. You mention a shipper whose identify was disclosed in a document marked “highly confidential” and you have disclosed that identify to Mr. Hyman on a number of recent occasions. That disclosure is a waiver of the STB protective order by CNJ Rail. We are preparing to litigate that issue since Mr. Strohmeyer has refused to allow documents under seal at the STB to be used in state court proceedings under similar protections. Therefore we are likely to encounter controversy with respect to these issues and can't become involved with the shipper or with CNJ Rail in its Oak Island or similar efforts that involve this shipper. Also, Montange has warned us against interfering and/or threatening the shipper, so there's another consideration.

Another serious flaw with the OFA suggestion is that it simply puts off the dispute with the City for five years. At the end of that period, if there were to be an abandonment, the City could simply pick up where it left off with discriminatory actions to prevent development. We will solve this problem before that, so waiting five years to start simply doesn't work.

Finally, neither you nor Charles Montange understand that property cannot be seized w/o just compensation, even by the STB. Conrail's land is highly valuable as is the land of the LLCs. The City simply doesn't have the money; nor do you.

There are other reasons too, but it makes little sense to continue these discussions. You and Eric Strohmeyer signed on with Montange, so ride that horse. You seem to think that he will prevail; we don't.

Daniel E. Horgan, ESQ
WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way, 7th Fl.
Secaucus, NJ 07094-3672
201-330-7453 (direct)
201-926-4402 (cell)
201-863-7153 (direct fax)
dehorgan@lawwmm.com

From: James Riffin <jimriffin@yahoo.com>

Reply-To: James Riffin <jimriffin@yahoo.com>

Date: Saturday, March 7, 2015 at 11:00 PM

To: "Daniel E. Horgan" <dehorgan@lawwmm.com>, Steve Hyman <shyman@shyman.net>, "cnjrail@yahoo.com" <cnjrail@yahoo.com>, Fritz Kahn <xiccg@gmail.com>

Subject: Letter to Craig Keats. Decision time

Attached are my comments re your latest filings. You need to decide which path Mr. Hyman should take. Attached are 9 cases you may not have read. They support my opinion that Mr. Hyman should file to Acquire and Operate his Embankment properties, and should file an OFA (A) to acquire the remainder of the Harsimus, and (B) to acquire some of Conrail's land West and North of Newark Avenue. I have asked Mr. Hyman to fund McFarland's efforts to acquire Oak Island. If Mr. Hyman were to send funds to you, and you were to forward those funds on to McFarland and to Mike Nielson, I believe you could make the argument that McFarland / Nielson were hired to help defend title to the Embankment properties, and therefore, Chicago Title should be liable for these legal expenses. (I am trying to find a way to get Mr. Hyman reimbursed for these legal expenses.) There are additional attachments which explain the connection.

Subject: Your participation in AB 167 1189

Date: Friday, September 18, 2015 at 7:02:23 PM Eastern Daylight Time

From: Eric Strohmeier

To: Jim Riffin

CC: C. Montange, Brian E. Niskala, Donald Shank, Horgan, Daniel, Robert Jenkins

Dear Jim,

I spent today preparing a response to your most recent set of pleadings at the STB in regards to the Harsimus Cove dispute.

Once again, (as Don, Brian, and I have previously asked you to do) **I strongly urge you to withdraw your involvement from this proceeding.** Your actions are greatly complicating CNJ Rail's interactions with the City.

CNJ Rail did not take kindly to the City's comments contained within Footnote 8 of their pleading of the Sept 14th . As a result of Mr. Montange's comment, CNJ Rail now has to address the content of Footnote 8. We do not like the fact that your involvement is causing a very public rift between CNJ and the City. If we didn't know better, one might get the impression that a public rift is something you could desire to exploit.

As we have mentioned to you privately, on more than one occasion; unless Mr. Hyman is fully prepared to reverse course and:

1. Seek the lawful acquisition of the line, and
2. Fully embrace a plan to restore rail operation on his property,

then your presence in this matter is just causing more difficulty for others, and will not achieve any positive results if you continue.

What your friends and allies here in NJ find to be most stunning is that you continue to claim to be acting on behalf of Mr. Hyman. However, the LLC's appear to have not followed any of your advice, and continue to publicly disavow your actions on their behalf. You are smart enough to be able to see the handwriting on the wall. You are damaging your own credibility pretty significantly.

So, once again, I ask you to reconsider your involvement in the Harsimus proceeding and give some serious thought to withdrawing from the morass. I need not remind you that *CNJ Rail maintains a very low profile* in this proceeding. We feel it would be prudent for you to do likewise.

Sincerely,

Eric S. Strohmeier
Vice President, COO
CNJ Rail Corporation
(908) 361 - 2435

CHARLES H. MONTANGE

ATTORNEY AT LAW

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(206) 546-1936
FAX: (206) 546-3739

239195
239197
239198

14 September 2015

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

ENTERED
Office of Proceedings
September 14, 2015
Part of
Public Record

Re: Conrail - Abandonment Exemption - in Hudson
County, N.J., AB 167 (Sub-no. 1189X)
and related proceedings AB 55-686X
and AB 290-306X

James Riffin's September 4 Pleadings Must Be Stricken
& Errata (footnote 6)

Dear Ms. Brown:

The Riffin replies filed September 4, 2015, in this and all related dockets, must be stricken as replies to replies, as out of time, and as unresponsive to the reply to which they purport to reply.

I. Background

On June 25, 2015, City of Jersey City, Rails to Trails Conservancy ("RTC"), and PRR Harsimus Stem Embankment Preservation Coalition (collectively City et al) filed a Reply to the late-filed (by over six years¹) "notice of intent to OFA" tendered by James Riffin on June 8, 2015. In a June 25 reply noting that the Riffin notice of intent be stricken, City et al noted that the Riffin attempt to invoke STB procedures must be dismissed as out of time. Accord, Idaho-Northern & Pac. RR Co. - Abandonment Exemption - in Wallowa and Union Counties, PA, AB 433X, served Dec. 13, 2001; General Railway Corp. - Ab. Ex. - in Osceola and Dickinson Counties, IA, AB 1067-2X, served Oct. 24,

¹ Notices of intent to OFA were due March 30, 2009, pursuant to this Board's order and 49 C.F.R. 1152.27(b)(2).

from City et al's positions.⁸ Instead, the unresponsiveness of Riffin's replies to the City's reply amounts to an abuse which itself justifies striking the tardy Riffin pleadings. Accord, City of Jersey City v. Consolidated Rail Corp., DDC 2009-1900, Sept. 30, 2013 (rejecting LLCs' attempt to argue extraneous claims). Moreover, allowing Riffin's replies to replies is neither necessary nor helpful to complete any "record" for purposes of pending decisions.

In the event this Board does not reject the Riffin pleadings filed September 4, 2014, City et al requests this Board to establish a schedule for further proceedings that permits the City to respond to Riffin's claims in a context in which they are germane, for they have nothing to do with the City's June 25 pleading.

V. Conclusion

For ten years City et al have sought relief from an illegal de facto abandonment in which Conrail and the LLCs have effectively accused each other of knowingly engaging. The LLCs, for whom Riffin asserts he sympathizes and claims to work, have renounced Mr. Riffin's assistance in further frustrating City et al.⁹ Mr. Riffin's declared interest is therefore as an officious intermeddler, engaged in a form of champerty and maintenance on behalf of entities (the LLCs) that (at least in public) disavow him. Mr. Riffin, like Falstaff in Shakespeare's Henry IV, makes

⁸ Mr. Riffin (who as already noted has indicated he wishes to file an OFA to assist the developer and also simply to thwart the City's OFA) insinuates in his replies to City et al's reply that City intends to misuse the OFA process. To the contrary, the City adopted an ordinance obligating the City to comply with OFA requirements. On September 3, 2015, in an oral opinion, this ordinance was upheld against numerous attacks by the LLCs in 212 Marin Boulevard, et al v. City of Jersey City, Hudson County (NJ) Superior Court No. HUD-L-2196-11. Riffin also at one point seems to claim that the City's OFA (which Riffin has not seen) somehow relies on Riffin. Counsel for City et al wishes to make clear that City is not relying on any information supplied by either Riffin or his associates at CNJ Railroad for purposes of its planned OFA. City's OFA is, and will be, totally independent of Riffin or CNJ.

⁹ Letter, Mr. Horgan (LLCs) to Ms. Brown, dated June 10, 2015 and filed June 11, 2015 in AB 167-1189X.

many claims that are wrong, but unlike Falstaff, Riffin is not speaking a part for comic relief. He is speaking in an actual legal proceeding. Riffin's officious involvement is not simply funny a la Falstaff, but instead is an unwarranted, disruptive, and ultimately unfair distraction for City et al and detrimental to the public interest.

Respectfully,

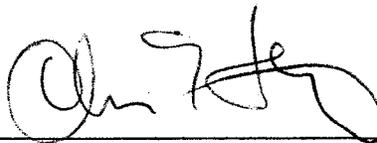


Charles H. Montange
for City of Jersey City, Rails to Trails
Conservancy and PRR Harsimus Stem Embankment
Preservation Coalition

cc. Parties per certificate of service

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, this 14th day of September 2015 addressed to Daniel Horgan, counsel for the LLCs, Waters, McPherson, McNeill, P.C., 300 Lighting Way, P.O. Box 1560, Secaucus, NJ 07096; and Robert M. Jenkins III, counsel for Conrail, Mayer Brown LLP, 1999 K Street, N.W., Washington, D.C. 20006-1101 and the other parties on the attached service list. The undersigned also provided email copies to Messrs. Jenkins, Horgan, Strohmeyer and Riffin.



Service List
Revised July 23, 2015

Daniel D. Saunders
State Historic Preservation Office
Mail Code 501-04B
NJ Dept. Environmental Protection
P.O. Box 420
Trenton, NJ 08625-0420

238598
238599

WATERS, MCPHERSON, MCNEILL
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
300 LIGHTING WAY
P.O. Box 1560
SECAUCUS, NEW JERSEY 07096

ENTERED
Office of Proceedings
June 11, 2015
Part of
Public Record

DANIEL E. HORGAN
MEMBER OF N.J., N.Y. & D.C. BARS

OFFICE DIRECT DIAL: 201-330-7453
CELL and VOICE MAIL: 201-926-4402
E-MAIL dehorgan@lawwmm.com

June 10, 2015

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
U.S. Surface Transportation Board
395 E Street, SW, Room #100
Washington, DC 20423

**RE: STB Docket No. 167-1189-X and Related Dockets; AB 55-686-X; AB 290-306-X
June 10, 2015 Submission of James Riffin**

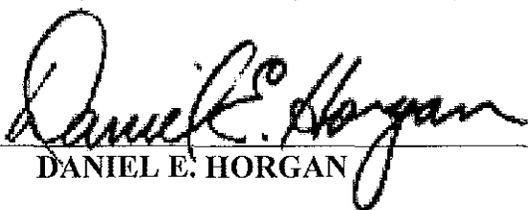
Dear Ms. Brown:

This evening Mr. Riffin has provided us with a copy of papers he apparently is about to file with the Board in the above matters. The papers are styled as a Response to a Motion filed today by Jersey City seeking an expedited date for filing OFAs. Mindful of the Board's recent admonition to the parties to refrain from unnecessary submissions, we take no position on what Mr. Riffin says, but write this letter for the singular and necessary purpose of addressing paragraph 40, E in Mr. Riffin's submission.

Mr. Riffin claims that he has offered his services to assist the LLC Intervenors and that he intends to submit an OFA in his own name as their "back-up plan." This, of course, is just his latest effort to interlope into the affairs of others in matters before the STB. He should be given no credibility, has no legitimate interest in these proceedings, and, for the record, lacks both statutory and substantive standing. Thank you.

Very truly yours,

WATERS, MCPHERSON, MCNEILL, P.C.

BY: 
DANIEL E. HORGAN

cc: Service List
James Riffin

EXHIBIT C

to

Letter to Charles H. Montange, Esq.

September 1, 2016

Item: Memorandum, 15 pages

From: James Riffin

**To: Bruce Ratner, etc. Forest City Ratner Companies
Gregg Wasser. G&S Investors**

Date: October 14, 2015

Subject: The “Property”...Hudson Exchange West

FROM: James Riffin P.O. Box 4044 Timonium, MD 21094 (443) 414-6210
jimriffin@yahoo.com

TO: **Bruce Ratner; Mary Anne Gilmartin; Abe Naparstek** Forest City Ratner
Companies 1 Metro Tech Center Jay Street Brooklyn, NY 11201 (718) 923-8400

Gregg Wasser G&S Investors 25th Floor 211 E. 43rd Street NY, NY 10017
(212) 286-8100

DATE: October 14, 2015

RE: The “**Property**,” that is to say: The Jersey City parcel bounded by Marin Blvd on the West; 2nd Street on the South. The Hudson Bergen Light Rail Line on the East; Thomas Gangemi Street on the North. Recently known as: **Hudson Exchange West**

Note: If you are a ‘get to the point person,’ or if you are too impatient to wait for novocaine to work, when getting dental work, then skip to p. 9.

INTRODUCTIONS

My name is James Riffin. My role at the moment, is that of Messenger. I bring you tidings and a bushel of lemons. If you would like, I have a really good recipe for lemonade, which I am willing to share with you.

Below is the beginning and middle part of a tale. The ending has not been written yet. If you desire, you may influence how the tale ends.

THE ‘PLAYERS’

Let me introduce the ‘players’ in the tale.

G&S Investors: Like a Chameleon, it has the ability to change the color of its skin, in order to better evade **predators**. Lately, it has changed its skin color several times. One of its latest skin colors is called “GS FC Jersey City Pep 1 (and 2) Urban Renewal LLC.”

Forest City Ratner Companies: A long-established, well-respected, development company, which has recently decided to build several new castles in Jersey City, NJ.

Conrail: Ebenezer Scrooge. The ‘Ghosts of Christmases Past’ is what this tale is about. The question is: Will those ‘Ghosts of Christmases Past’ be put to rest, or will they continue to wander the countryside, doing their mischief.

Jersey City: One of the Predators. Recently it was seen gamboling about the Property, in Sheep's clothing.

Charles Montange: The Chief Predator. He plots how to trap his pray.

Steve Hyman: A Squire who also desires to build castles in Jersey City.

Daniel Horgan: Steve Hyman's Knight, who has tried valiantly to protect his Squire, Mr. Hyman. Sometimes very successfully. But not so successfully before the Queen's Court.

Eric Strohmeier: A Newcomer, who knows of many 'Ghosts of Christmases Past.'

James Riffin: A 'wee lad' who discovered several holes in the 'dike,' and who is attempting to warn that the dike is about to give way. He has also charted a good escape path, to avoid the impending calamity.

The King: The U.S. District Court in Newark, NJ. The King can either make a decision independent of the Queen, or, on occasion, may review decisions made by the Queen.

The Queen: The Surface Transportation Board ("STB"). The Queen (STB) regulates freight railroads. Until 1996, the Queen was called the Interstate Commerce Commission. Below, I tell you how to access the various decrees the Queen has issued, and the various pleadings filed with the Queen. The Queen is the player that determines the rules of the game, and that watches over the plays by the Queen's Vassals.

God: The U.S. Court of Appeals. He watches over his vassals from his throne in Philadelphia, PA, the District of Columbia, and eight other thrones. Decisions made by the Queen, or by the King, are reviewable by God, providing God is willing to listen to one's prayers.

THE TALE

A long time ago, (more than a hundred years ago), some bold entrepreneurs decided to build a line of railroad from the Docks of Jersey City to Kearny, NJ. They called this line of railroad, **The Harsimus Branch**. A mile or so away from the Docks, a rail yard was built. In the early 1900's, the portion of the rail line between Waldo Street and today's Marin Blvd, was elevated. Between Brunswick Street and today's Marin Blvd, the rail line was built at the top of what today is called, **The Embankment**.

Until the 1960's, all was fair in land through which the Harsimus ran. Then the storm clouds came. After much calamity, Congress decided to rescue the Harsimus, and many other railroad

lines. Congress created Conrail. Congress gave to Conrail, those lines of railroad that were deemed most fit to save.

Congress' Gifts to Conrail were recorded in a large book, entitled **The Final System Plan**. All of the Gifts were numbered. The Harsimus Branch was numbered "**Line Code 1420.**" Another gift to Conrail, was a line of railroad called **The Hudson Street Industrial Track**, which was numbered "**Line Code 1440.**" These Gifts to Conrail were duly noted on p. 272 of the big Final System Plan Book.

For awhile, these Gifts were appreciated by Conrail. In the 1980's, these two Gifts lost their luster. Conrail ignored these no-longer-wanted Gifts. In the 1990's Jersey City asked Conrail if Conrail would properly dispose of these no-longer-wanted Gifts. Conrail said, "No," but gave Jersey City permission to dispose of the bridges and rails that were associated with these Gifts.

After the bridges and rails were removed, Conrail decided to sell the dirt under these Gifts. (But not the Gifts. Gifts can only be sold with the Queen's Blessing.)

G&S Investors saw value in the former 'Yard' portion of the Harsimus. After some dickering, G&S acquired the 18-acre 'Yard' portion of the Harsimus. G&S built structures on the land it acquired. The Tenants did well. And all was well in the land of Jersey City.

In the 2000's, Conrail asked Jersey City if Jersey City wanted to buy the Embankment portion of the Harsimus. Jersey City declined. So Conrail put the Embankment up for bid. Only one person offered to buy the Harsimus: **Squire Steve Hyman**. He too saw value in the land. He sought to build castles on the Embankment.

Alas, the Fates were not kind to Squire Hyman. Shortly after he bought the Embankment, New Rulers took over Jersey City. The New Rulers coveted Squire Hyman's Embankment property. The New Rulers offered to buy the Embankment from Squire Hyman, for the same price that Squire Hyman paid. Squire Hyman wanted more than what he had paid.

That displeased the New Rulers. So the New Rulers hired a 'dragon slayer' whose name was Charles Montange. Mr. Montange was very experienced in slaying dragons. He had slain many dragons, and used their fur as Magic Carpets. Many people today walk on the Magic Carpets that he has made.

Mr. Montange knew the Queen very well, and knew the Queen's rules really well. He plotted how to slay the Hyman dragon. He devised a really ingenious plan:

First, he would have the Queen declare that the Harsimus was still a line of railroad, even though the rails and railroad bridges had been removed decades ago.

Squire Hyman's Knight, Dan Horgan, attempted to protect his Squire. He appealed the Queen's Decision to God. (While God was sitting on his D.C. throne.) God said: Let the Special Court King (sitting on his throne in the District of Columbia) review the Queen's

decision first. After much blustering, (and after Dragon Slayer Montange let Knight Horgan read the big Final System Book, and read some of the Queen's Rule Book), Knight Horgan and Dragon Slayer Montange decided to call a truce: They stipulated to the Special Court King that the Harsimus was still a line of railroad, for Conrail had never asked the Queen for her permission to abandon the Harsimus Gift that Congress had bestowed upon Conrail.

After Dragon Slayer Montange prevailed over Knight Horgan in the battle to determine whether the Harsimus was still a line of railroad, Conrail realized that it had displeased the Queen, by selling portions of the Harsimus Gift before asking for the Queen's permission to abandon the Harsimus Gift.

So Conrail, in an effort to appease the Queen, and in an effort to appease Squire Hyman, (who had given Conrail \$6 million for the Embankment portion of the Harsimus), and in an effort to 'make things right,' Conrail asked for the Queen's permission to abandon **all** of its Harsimus Gift, not just the Embankment portion of the Gift. That meant, from Waldo Street to Washington Street.

So Conrail, in **2009**, dutifully filed a Notice of Exemption with the Queen. The Queen docketed the Notice **AB 167 (Sub. No. 1189X)**.

Dragon Slayer Montange gleefully waited until Conrail filed its Notice. Then Dragon Slayer Montange pounced on his pray: He filed a Notice with the Queen, that he intended to file an **Offer of Financial Assistance**. ("OFA"). In effect, he asked the Queen for a license to hunt, to capture, and to provide Jersey City with the spoils of his hunting quest: The elusive Harsimus.

Dragon Slayer Montange knew his Queen's Rules of the Hunt very well. First, the Queen would declare that Conrail need not keep its Harsimus gift. The Queen then would ask if anyone else wanted the Harimus gift. If someone said yes, then the Queen would offer that someone the Harsimus gift. If that someone agreed to pay Conrail the Net Liquidation Value of the Harsimus Gift, then the Queen would grant that someone permission to acquire the Harsimus Gift from Conrail.

But the Queen had several stipulations: First, anyone who desired to acquire the Harsimus Gift would have to first prove that the Harsimus Gift was really needed for its original intended purpose: **For the provision of continued freight rail service.**

Then the buyer would have to use the Harsimus for continued freight rail purposes, for at least five years. (Only two years, if Conrail did not object.) At the end of five years, the buyer then could convert the Harsimus into a 'rails to trails.' So long as the Harsimus remained a 'rails to trails,' the Queen would continue to have jurisdiction over it, and could anoint someone to turn the trail back into a line of railroad.

In effect, Dragon Slayer Montange would deliver to Jersey City a Magic Carpet (a 'rail easement'), which would lie over the ground owned by Squire Hyman, and owned by G&S

Investors. This Magic Carpet would truly have magical qualities: It would cover all of the land formerly used by the Harsimus line of railroad. It would permit Jersey City to determine who could walk on that Magic Carpet, and who could not. And most importantly, it would permit Jersey City to 'smother' Squire Hyman, effectively preventing Squire Hyman from ever using his Embankment land.

And what was most magical about the Carpet, was the price for the Carpet! It was free! It would be a gift from the Queen! To be enjoyed forever. So long as no one complained to the Queen that the Carpet was not actually being used for its intended purpose: Providing freight rail service. And so long as no 'complaints' were filed within the first two years after the Magic Carpet was acquired.

Needless to say, Squire Hyman and Conrail were very displeased with how Dragon Slayer Montagne had 'outfoxed' them, by knowing the Queen's Rules better than they knew the Queen's Rules.

So Squire Hyman asked Knight Horgan to 'huff and puff and blow Dragon Slayer Montagne's House down' Which Knight Horgan did. For six years. To no avail.

What Squire Hyman and Conrail did not know, was that Newcomer Strohmeyer, was a frequent visitor at the Queen's Court. He read every pleading that was filed with the Queen. Over many years, he had learned many secrets. He also was very creative. He too knew the Queen's Rules really well. He also had learned how to play the Queen's games.

While he rarely won while playing any of the Queen's games, he knew how to use the Queen's Rules, to antagonize his opponents. He was the David that pelted Giants Conrail and Norfolk Southern with stones. Due to his limited resources, he could only hurl small stones, which mostly bounced off of the Giants' armor.

Newcomer Strohmeyer had a goal: To one day get one of the crumbs cast off by one of the Giants.

He learned of Squire Hyman's problem. But he did not know Squire Hyman. He knew that a long-time player in the Queen's Court, Fritz Kahn, who had been General Counsel to the Queen, represented Squire Hyman. He spoke with Fritz Kahn. Mr. Kahn knew that Squire Hyman needed a guide that knew where all of the land mines were located, and knew how to circumvent the booby traps and obstacles in the moot surrounding the Queen's Court. Mr. Kahn suggested to Squire Hyman that he speak with Newcomer Strohmeyer.

At a meeting in 2012, Newcomer Strohmeyer offered to guide Squire Hyman through the legal swamp and moot surrounding the Queen's Court. Knight Horgan told Squire Hyman: He is a nobody. He has not been formally educated in the law. No one at the Queen's Court respects him. Do not listen to him.

Squire Hyman listened to his trusty Knight Horgan. Squire Hyman hired another Knight, Peter Pfohl, who also was a frequent player in the Queen's Court. Knights Pfohl and Horgan convinced Squire Hyman to use their strategy: Get a State Court to declare that Jersey City did not have the requisite authority to file an OFA. They lost.

Since Squire Hyman had no interest in Newcomer Strohmeier's strategies, Newcomer Strohmeier offered his ideas to Dragon Slayer Montange. With Newcomer Strohmeier's help, Dragon Slayer Montange was able to devise a viable plan which would convince the Queen that the Harsimus was indeed needed, and would in fact be used, for Continued Freight Rail Service.

Unfortunately for Dragon Slayer Montange, his original strategy worked too well. He actually convinced the Queen that the Queen needed to study how Squire Hyman, or anyone else, would use the Historic Embankment. So on July 31, 2015, the Queen let it be known that the Queen would study the Embankment more thoroughly. And until the Queen finishes her more-in-depth study, the OFA process will remain in a holding pattern.

But once that more-in-depth study is completed, and the Queen permits the OFA process to move forward, it will move at lightening speed. Within 90 days, someone will be awarded the Harsimus Gift. And whomever receives the Harsimus Gift, will get the Magic Carpet, over the entirety of the Harsimus, from Waldo Street to Washington Street.

And whatever is under that Magic Carpet, will be smothered to death. For the Queen's Command, will be not be overturned by God, for the Queen's Command will have been made explicitly according to the Queen's Rules. Which is all that God demands.

And whomever owns that Magic Carpet, will have the right to **exclusive** possession of all that the Magic Carper covers, from the center of the earth to the heavens.

Of course, the owner of that Magic Carpet may permit others to occupy some of the space under the Magic Carpet, and above the Magic Carpet, and even next to the Magic Carpet, so long as there is sufficient room left on the Magic Carpet to potentially provide continued freight rail service. And in exchange for permitting others to occupy some of the space under / over the Magic Carpet, the owner of the Magic Carpet may demand offerings from those who wish to use the space under / over the Magic Carpet. Whatever the Market will bear.

The interesting part about the Magic Carpet, is what it may cover. Besides covering a significant portion of G&S Investors' property, and all of the Embankment, it could well cover another 12 acres or so West and North of Newark Avenue. All of which could be developed with new castles. And perhaps with direct access to the NJ Turnpike Extension. And perhaps with a Magic Monorail, which would connect all of the newly built castles with Journal Square and the Hudson Bergen Light Rail Line. That would be a really nice amenity: One's own private commuter line, thereby putting all castle dwellers only minutes away from trains capable of whisking them to far away places. And think of how many castle-dwellers' cars could be stored in those nice Embankment boxes.

Conrail presently owns the Magic Carpet. Conrail has the sole, absolute right to determine which of three Carpet buyers, it will chose to sell its Magic Carpet. Squire Hyman has a very large whip, which he can use to whip Conrail into shape. Conrail is beholding to Squire Hyman and G&S Investors. However, Conrail has much experience with repelling those who wish to bring it to task. And Conrail has the ear of the Queen. But not the ear of the King.

Conrail only fears the King. And few know the combination to the lock which permits access to the King's Court. One of those few who know the combination, is Messenger Riffin.

Messenger Riffin still believes in fairy tales. He desires all to live happy ever after. He has a Plan that, if implemented, would permit all the players to live happy ever after. Riffin hopes to persuade Scrooge Conrail 'to see the light.'

But to implement his Plan, the other Players first must learn what his plan is. Then they must each play their part to see that the Plan is implemented.

Shortly, Riffin will ask the King to enjoin all others from soiling the Magic Carpet. That way the Magic Carpet will be preserved in its present state.

If enough Vassals complain loud enough to Scrooge Conrail, perhaps Conrail will be persuaded to dispense with a few crumbs to pacify the rebel-rousers. Riffin firmly believes that there is a way to ensure that everyone gets a piece of the Magic Carpet.

How this Tale ends, has yet to be determined.

I am hoping that you find this Tale to be interesting, and that your interest will cause you to want to know more.

HOW TO USE THE QUEEN'S WEB SITE

The Queen's web site is located at:

www.stb.dot.gov

For a history of AB 167 (Sub. No. 1189X), you should go to the Queen's web site, then put your cursor on "E-library." Click on 'Decisions' in the pop down. When a new page comes up, click on "Search by parameters." (Upper right hand corner of the web page.) When the 'Search STB Actions' page comes up, the default position is 'Decisions.' There are four fields: Put your cursor on the first field. A list of letters will pop down. Click on "AB." In the second field, enter "167." In the third field, enter "1189." Click on the fourth field. More letters will pop down. Click on "X." Click on "Search." (On the bottom of the page.) A new page will appear, with all of the STB's decisions in the 1189 proceeding. To read the decisions, click on the first column (the 'date' column) of whatever decision you want to read. When the next page comes up, click on the "PDF" icon. The decision will appear in "PDF" format. You may save and/or print the decision. To view a list of 'filings' in that proceeding, repeat the above process,

except, at the very beginning, click on ‘filings’ instead of ‘decisions.’

If you have trouble with what I have described, have someone call me, and I will walk them through the process.

I believe that it is important for you to know how to access the STB’s web site, and how to ascertain what the 1189 proceeding is about.

THE ‘MAP’

I now will attempt to guide you to another section of the Queen’s web site.

Go to the STB Home Page. Instead of putting your cursor on the ‘E-library’ icon, put your cursor on the ‘Environmental’ icon. A number of listings will pop down. Click on ‘Environmental Correspondence.’ When the next page comes up, look in the upper left hand corner, where four lines of print will appear, in very small type. The fourth line down will say “Outgoing correspondence, by docket number.” Click on that line. When the next page comes up, scroll down to “AB 167 1189X.” Click on the blue arrow. A number of entries will appear, by date, in ascending order. Scroll down to the bottom. Scroll up seven lines from the bottom, to the “EO 2609” line. Click on that line. A letter sent by the STB’s environmental section to the “Advisory Council on Historic Preservation,” dated July 31, 2015, should appear. Scroll to page 5 (of 96 pages). You should see a Map of Jersey City with a bright yellow line on it.

The bright yellow line is where the Queen believes that the Harsimus Magic Carpet lies.

You should observe that the bright yellow line goes through the Property on a diagonal. Surrounding that yellow line, are a lot of train tracks. What you are looking at is the original train yard that existed where the Property is presently located. You should print out a copy of that Map.

SHORT, TO THE POINT, VERSION

I am writing this as a courtesy to you, and to your company.

The Property you desire to build on (“**Property**”), was acquired from Conrail 15 years or so ago. The Property formerly was a rail yard. The Harsimus Branch (a ‘line of railroad’) ran through the yard. It still does. Which presents a ‘problem’ for you.

Yard tracks can be sold without STB authority. Therefore, it was legal for Conrail to sell the ‘yard track’ portion of the Property to G&S Investors. See 49 U.S.C. 10906.

‘Lines of railroad’ cannot be sold without the STB’s authority. If the real estate under a ‘line of railroad’ is sold, without STB authority, a ‘rail easement’ is impressed upon the real estate. (The alternative is the STB voids the deed, and orders the real estate be reconveyed back to Conrail.) See 49 U.S.C. 10901(a)(4).

The yellow line on the Map described above, represents where the Harsimus ‘line of railroad’ ‘rail easement’ exists today. (As of July 31, 2015.) That yellow line bisects the Property on a diagonal. That yellow line is about 140 feet wide. (The width of the yellow line on the West side of Marin Blvd.)

And therein lies your problem: Going through the middle of your property is a ‘line of railroad.’ Which Conrail failed to receive abandonment authority for, prior to selling the real estate.

Jersey City (and two other potential buyers) desire to acquire the Harsimus line of railroad via the Offer of Financial Assistance (“**OFA**”) procedures. See 49 U.S.C. 10904 and 49 CFR 1152.27. The putative purpose for acquiring the Harsimus, is to provide freight rail service, and to preserve a commuter rail transportation corridor, in case NJ Transit decides it wants to extend a branch line from the Hudson Bergen Light Rail line to Journal Square.

Pursuant to a number of cases, the most prominent being *Railroad Ventures*, 299 F. 3rd 523 (6th Cir. 2002), no changes can be made to a ‘line of railroad,’ beginning with the date an abandonment petition is filed, until the OFA process has been completed.

Consequently, it is unlawful for you to make any changes to the real estate under the ‘line of railroad’ ‘rail easement’ that is impressed on the Property, until the OFA process has been completed.

Sometime in the next two to three weeks, I plan to file a Complaint in the U.S. District Court, located in Newark, NJ. Your companies will be named as defendants. The purpose of this letter is to give you some advance warning, and to provide you with an explanation as to why this Complaint is being filed. (Normally, you only have 20 days within which to file an ‘Answer’ to a Complaint. By giving you some advance warning, I am in effect, providing you with an additional 20 days, to think about the issues that will be presented in the Complaint, and to

formulate your response.)

The Complaint will ask the Federal District Court to enjoin your companies from any further development on the above described property, pending resolution of the OFA process in a proceeding before the Surface Transportation Board (“STB”), which was docketed **AB 167 (Sub. No. 1189X)**.

My role in this matter has yet to be determined. While I would prefer that my role be that of a mediator, my role will be determined by you and the other parties in the proceeding.

In effect, I am bringing you a bushel of lemons. I have a really good recipe for lemonade, which I am willing to share with you. If you do as I suggest, when this is over, you could be selling lemonade for \$5 a glass, instead of 50 cents a glass.

SOME HISTORY

The Harsimus Branch was a line of railroad that began at the waterfront in Jersey City. It went to a large rail yard where your Property is currently located. The rail line then went to Kearny, NJ. The rail line was acquired by the Pennsylvania Railroad. The PRR merged with the New York Central, to form Penn Central. When the Penn Central (and a lot of other Northeast railroads) went bankrupt, Congress created Conrail. In 1976.

A book entitled “**The Final System Plan,**” was published. In that book, is a list of all of the rail lines that were transferred to Conrail. On page 272 of Volume I of the Final System Plan, appears the line notation:

Line Code	From	To	MP 1	MP2	Branch name	Interests
1420	Jersey City	Harrison	1.0	7.0	Harsimus Branch	Line to CRC

Line Code 1420 is the line code for the Harsimus Branch in Jersey City. It was transferred to Conrail (CRC), via the Final System Plan, in 1976. From Newark Avenue to Marin Blvd, the rail line was elevated. This section is called, “The Embankment.” Each Embankment section was connected with a rail bridge.

In the 1980's rail traffic on the Harsimus, began to drop off. The last rail car moved over the line in late-1980's, early-1990's. Around 1996, the rail bridges were removed. Conrail attempted to sell the real estate.

G&S Investors bought the ‘Yard’ portion of the Harsimus from Conrail. (The ‘Property.’) At the time of purchase, Conrail misrepresented that the entirety of the Property, was 49 U.S.C.

10906 'excepted' track.¹ In reality, there was a 'line of railroad' (Line Code 1420), that passed through the yard.

While it was legal for Conrail to sell the 'yard' portion of the Property, to your predecessor in title, without STB authority, and while it was legal for your predecessor in title to acquire the 'yard' portion of the Property, without STB authority, **it was not legal** for Conrail to convey to your predecessor in title, and for your predecessor in title to acquire, the 'line of railroad' that went through the 'Yard.'

MORE HISTORY

Your predecessor in title bought the Property from Conrail. The rails were removed. The present structures were built on the Property. And no one cared that there was a 'line of railroad' running through the center of the Property. Until 2006.

Conrail wanted to sell the Embankment portion of the Harsimus. Conrail offered the Embankment portion to Jersey City. Jersey City declined. Squire Hyman offered to purchase the Embankment portion. He paid Conrail \$3 million for about 6 acres. (Between the NJ turnpike and the West side of Marin Blvd.) Mr. Hyman took title via Quit Claim deeds.

Mayor Fulop, and a new set of City Counsel persons, were elected in 2006. They decided that they wanted the Embankment portion, for a 'trail, park, and light-rail extension.' They hired a 'rails to trails' lawyer: Charles Montange. Mr. Montange looked in the Final System Plan book, noted that the Harsimus was conveyed to Conrail as a 'line of railroad,' and further noted that Conrail never acquired permission from the STB to abandon any portion of the Harsimus.

Mr. Montange, on behalf of Jersey City, set out to establish that the Embankment portion was still a 'line of railroad.' After three years of litigation, the D.C. District Court, sitting as the Special Court, held that the Harsimus was still a 'line of railroad.'

Conrail, in 2009, filed a petition with the STB to 'abandon' the Harsimus. The petition was docketed, AB 167 (Sub. No. 1189X).

Mr. Montange's legal strategy was:

- A. Have the Harsimus declared to be a 'line of railroad.'
- B. Force Conrail into filing an 'abandonment' petition with the STB.

¹ Under 49 U.S.C. 10906, "spur, industrial, team, switching, or side tracks," are not 'regulated.' That is, a rail carrier may abandon / sell these types of tracks without prior authority from the STB. Likewise, a non-rail carrier may purchase / acquire, 'excepted' tracks, and the land under them, without STB approval. Under 49 U.S.C. 10903, a rail carrier cannot 'abandon' a 'Line of railroad,' without prior STB approval. That means a rail carrier cannot sell a 'line of railroad' without STB approval. Pursuant to 49 U.S.C. 10901(a)(4), a non-rail carrier cannot acquire a 'line of railroad,' without STB approval.

- C. Acquire the Embankment via the Offer of Financial Assistance procedures.²
- D. Hold title to the Embankment for 5 years.
- E. After 5 years, convey title to the Embankment to a separate legal entity, which would petition the STB to convert the 'line of railroad' into a 'trail,' pursuant to the National 'Rails to Trails' Act. (A 'line of railroad' approved to be converted into a 'trail,' remains a 'line of railroad,' subject to the STB's exclusive jurisdiction.')

A very neat, perfectly legal, way to divest Mr. Hyman of his property. All for the princely sum of Zero Dollars. (Plus legal fees.)

The City would acquire the 'rail easement,' that is impressed on the Embankment, not the fee simple title to the dirt under the 'rail easement.' Rail easements have a Net Liquidation Value of Zero Dollars. [When a rail easement terminates, title to the rail easement reverts back to the original (or adjacent) property owners. (Title to an easement terminates once the purpose for the easement no longer exists.) When a rail carrier abandons a rail easement, title reverts back to the original / adjacent property owners. Thus, after abandonment, the rail carrier has nothing to sell. Consequently, a rail easement has no value (Zero Dollars value), after abandonment.

In 2009, Jersey City filed a Notice of Intent to File an Offer of Financial Assistance to acquire the Harsimus. So did a Mr. Eric Strohmeyer. So did I, in June of 2015.

In a further effort to prevent Mr. Hyman from developing the Embankment, the City had the Embankment placed on the Local and State Historic registers. The STB issued an Environmental and Historic Report, when said, because all of the bridges and tracks had been removed years earlier, abandonment would not have an adverse impact on the Environment, nor on any historic structures. (Conrail would not do anything that would adversely affect the environment or any historic structures.) Up until this proceeding, the STB never considered the impact on the environment, or on historic structures, that might be caused by the **purchaser** of an abandoned line of railroad. The STB reasoned: When abandonment occurred, it lost jurisdiction over the real estate. Anything that happened after abandonment, was on 'someone else's watch.'

Mr. Montange argued, successfully, that the STB should consider the environmental and historic impacts that might occur due to the **purchaser's** activities.

So now the STB is evaluating the environmental and historic impacts that might result were Mr. Hyman to build hi-rises on the Embankment, or were Mr. Hyman to remove the fill material / Embankment stones.

² Pursuant to 49 U.S.C. 10904, whenever a rail carrier seeks to abandon a 'line of railroad,' anyone may offer to purchase the 'line of railroad,' via the Offer of Financial Assistance procedures. The procedures are codified in 49 CFR 1152.27. Several U.S. Courts of Appeal, the ICC, and the STB, have held that a purchaser may also purchase any adjacent carrier-owner property, if that adjacent property 'is needed for rail transportation.' **Pursuant to a case entitled 'Railroad Ventures,' an OFA offeror has the right to purchase whatever existed at the time the rail carrier filed to abandon a line of railroad.** In effect, the OFA offeror has a right to insist that the 'status quo' that existed at the time the abandonment petition was filed, be maintained.

My guess is that this more detailed environmental / historic analysis, will take a year or so to complete. After that, the public will be given an opportunity to make comments. Then the STB will permit abandonment to occur. And will permit the OFA process to begin.

JERSEY CITY'S OFA

Jersey City passed an Ordinance, authorizing Mr. Montange to file an OFA on behalf of the City, to acquire the Harsimus from Waldo Street to the West side of Marin Blvd.

Mr. Montange has argued that the Harsimus is needed for continued freight rail purposes, and is needed as a 'transportation corridor' in the event that New Jersey Transit decides to add a branch line to the Hudson Bergen Light Rail line.

In order to justify the 'transportation corridor' argument, Mr. Montange needs to expand his OFA to include acquisition of the rail easement across your Property, in order to reach the Hudson Bergen Light Rail line.

RIFFIN'S OFA ARGUMENT

There is another 'line of railroad' that is connected to the Harsimus: Line Code 1440. That is the former Hudson Street Industrial Track. The Hudson Bergen Light Rail line uses the former Hudson Street Industrial Track right-of-way.

The Hudson Street Industrial Track was never abandoned. It presently is still 'connected' to the National Rail System, by being 'connected' to the Harsimus. If any portion of the Harsimus is abandoned, the Hudson Street Industrial Track will become a 'stranded segment.' (A segment of rail line that is not 'connected' to the National Rail System.) Stranded segments, are not permitted.

Consequently, no portion of the Harsimus may be abandoned prior to the Hudson Street Industrial Track being formally abandoned. Which means that the rail easement across your Property, cannot be abandoned, prior to the Hudson Street Industrial Track being abandoned.

Which gives a much more powerful legal argument as to why the rail easement across your Property must be preserved. At least until the Hudson Street Industrial Track is abandoned.

RAILROAD VENTURES

There is a case entitled '*Railroad Ventures*,' in which a U.S. Court of Appeals held that an OFA offeror has the absolute right to acquire whatever existed at the time an abandonment petition is filed. In effect, the rail carrier must preserve the 'line of railroad' in whatever condition it was in, at the time that the rail carrier filed its abandonment application.

There are a number of STB decisions saying the same thing. In Vicksburg, MS, the Kansas City Southern sought to abandon 5 miles of tracks. A Notice of Intent to File an OFA was filed.

During the OFA process, the local public works department decided to remove a rail bridge, and did so. When the STB learned about the unauthorized bridge removal, it issued an order forbidding the local public works people from any further removal activities. The STB also ordered Kansas City Southern to pay to the OFA offeror, the cost to replace the bridge.

THE COMPLAINT

When Conrail filed its abandonment petition, there was a parking lot on the rail easement across your Property. (And a Bed, Bath and Beyond, and perhaps a portion of BJ's.) Per OFA law, what existed in 2009, must remain just as they were in 2009, until the OFA process is completed.

It has come to my attention that you have imminent plans to begin constructing a 35-story hi-rise on Your Property. You also have plans to demolish the existing Bed, Bath and Beyond and BJ's structures, then build new structures. Were you to do any of this, the status quo of the rail easement, as it existed in 2009, would be changed. Which is not permitted by the OFA law.

Were you to build a structure on the rail easement, the purchaser of that rail easement would have the legal right to either have you remove the structure, or could charge you 'rent' for using the rail easement. (Sort of like 'ground rent.') Think Grand Central Station in NY. The rail easement is underground. The air space above the rail easement still belongs to the rail carrier. The owners of those hi-rises, pay rent for using that air space.

It matters not whom ultimately acquires the rail easement. Be it Jersey City, me, or Eric Strohmeyer. The owner of that rail easement has the right to 'exclusive' possession of that rail easement: The full-width by to the heavens by to the center of the earth.

Since I do not want the status quo to change during the OFA process, I will ask the District Court to enjoin any changes in the property, until the OFA process has run its course.

AN ALTERNATIVE

I have advocated for the past several years, that all of the parties need to get together, and reach a global settlement. That includes you. To date, no one has taken my suggestion seriously.

Conrail has zero interest in reaching a settlement. Mr. Hyman does have an interest. I have an interest.

Before a party will consider a settlement, the party must believe that they could lose the litigation. To date, Conrail has never thought that it could lose anything. Its conveyances were by Quit Claim deeds. Those deeds have no warranties of title. In effect, Conrail said that if it had any title, it was transferring that title, but it did not warrant that it had any title to convey.

In this case, by law, Conrail was not permitted to convey title to its rail easement to your predecessor in title, or to Mr. Hyman. Nor was your predecessor in title, nor was Mr. Hyman,

permitted to acquire any title to Conrail's rail easement, without the express authority of the STB. Which neither of you ever acquired. In effect, your predecessor in title's acquisition of Conrail's rail easement was unlawful, and as such, is void, as against public policy.

The STB has the power, and the authority, to void your deeds, and Mr. Hyman's deeds.

Mr. Montange has asked the STB to void Mr. Hyman's deeds.

My personal opinion is that the STB will not void your deeds, nor Mr. Hyman's deeds. Instead, it will permit the OFA process to move forward. It will address the 'deed' problem sometime in the future. If the problem still exists. (The problem will still exist, unless the parties reach a settlement, resolving this title problem. The STB is hoping that the parties will reach a settlement, and will make the deed problem go away, without forcing the STB to address the issue.)

CONCLUSION

Which leads me to my second reason for writing this rather lengthy missive:

Do you have an interest in trying to resolve this mess via settlement talks?

I have made a number of settlement proposals to Mr. Hyman and to Conrail. It is my personal opinion that a settlement is possible.

After reading this missive, I would suggest that you review the 1189 proceeding, and become more knowledgeable about railroad law. Especially 'rail easement' law and the OFA process.

I can provide you / your attorneys, with material that you should become familiar with. At no cost to you.

Once you have ascertained that my concerns are valid, and real, I then would suggest that we have an informal 'chit chat.'

If your are willing to sign a Confidentiality Agreement, I will disclose to you the settlement terms that I have suggested to Mr. Hyman and to Conrail.

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation -)
Abandonment Exemption -) AB 167 (Sub-no. 1189X)
In Hudson County, NJ)

And related discontinuance proceedings AB 55 (Sub no. 686X) (CSX Transportation, Inc.) and AB 290 (Sub-no. 306X) (Norfolk Southern Railway Company)

LLC's Responses & Objections to City, et als.

Request for the Production of Documents

City et al to the LLCs

Pursuant to 49 C.F.R. 1114.30 and other applicable authority, interveners City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition hereby request that the LLCs deliver copies of the documents requested below to counsel for City et al his address below on or before the date specified herein pursuant to reasonable terms for payment for costs of duplication and delivery agreed to in writing with the LLCs.

For all purposes herein, "the LLCs" shall mean one, more or all of 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Coles Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, 446 Newark Avenue, LLC, and NZ Funding, LLC. The LLCs shall include past and current managers, representatives, agents and owners, including but not limited to Steven Hyman and Victoria Hyman.

For purposes of this Request, document shall mean any writing, notation, or record, regardless of form, and including

but limited to both electronic and non-electronic media, including emails, diaries, business records, and all documents maintained, retained, authored, copied on, or received by consultants, officers, employees, negotiators, board members, attorneys otherwise working for or on behalf of any party (including without limitation railroad, corporation, limited liability corporation, or individual) who has filed a pleading in AB 167-1189X. Without limitation, documents shall include any emails sent to or received by Mr. Steven Hyman and all documents attached or related thereto.

Harsimus Branch shall mean any portion of the line of railroad between CP Waldo and Marin Boulevard in Jersey City transferred to Conrail as line code 1420, which line of railroad is in whole or in part the subject of the abandonment proceeding bearing STB docket AB 167 (Sub-no. 1189X).

Additional instructions. If the LLCs claim privilege against disclosure of one or more documents, such as an attorney client privilege, then please identify the document by providing its author, the persons to whom it was directed, the persons who received copies of it, its date, its basic subject matter, the document request to which it is responsive, and the basis for the claim of privilege.

If the LLCs have destroyed or erased any document responsive hereto, please indicate that responsive documents

have been destroyed or erased, state the approximate date, and state the LLCs document retention policy, if any.

City et al request a response as soon as reasonably practicable, and no later than Friday, September 2, 2016.

These requests are continuing. If the recipient becomes aware of additional responsive material after making his response to these requests, that responsive material must be made available to City et al as provided above within three (3) business days of the LLCs' receipt of the additional responsive material.

GENERAL OBJECTION: Steven and Victoria Hyman, and NZ Funding, LLC are not parties to these proceedings and it is improper to direct interrogatories to them as individuals or entities not within the jurisdiction of the STB in Exempt Abandonment proceedings. The Rails to Trails Conservancy, and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition have not filed any notice of intent to file an Offer of Financial Assistance (OFA) in these proceedings, they are not actual or potential shippers of freight by rail, and there is no legitimate reason for discovery in the STB's presently ongoing National Historic Preservation Act review by its Office of Environmental Analysis. Therefore, these document requests are improper as propounded by those two parties

because they have no cognizable property or other interest to be protected in these proceedings that requires discovery. The inclusion of these entities impermissibly expands the scope of discovery in which they have no permissible interest.

There is no basis within these proceedings now before the STB that concerns the relationship (if any) between the LLCs and James Riffin. In a similar ruling on an analogous request for documents between Conrail and the LLCs, the STB ruled on November 2, 2015 that similar overly broad requests by the same requestors were not proper in exempt abandonment proceedings. That ruling applies with equal force here to establish that the present requests are likewise improper. The overbroad scope of the requests violates the strictures of 49 CFR §1114.30(b) as to particular documents or categories of documents requested, and the time specified for a response to the requests is unreasonable.

The personal nature of certain of the inquiries, seeking private medical information on non-issues is entirely outside the scope of proper discovery in these proceedings. Those requests appear on their face to be issued for the purposes of harassment, embarrassment and to increase the personal and financial burdens of the LLCs and their

owner, Victoria Hyman, and upon Steven Hyman. The overall burdens presented, including the need to review documents for privilege or other objections is likewise not possible to perform in a few weeks, would involve significant effort and expense, is clearly not required in exempt abandonment proceedings, and is not proportional in any way to those proceedings.

Finally, some of these requests are for similar, if not identical, information sought by other discovery requests that have been resolved between the City and Mr. Riffin before FERC Administrative Law Judge John P. Dring. If in those proceedings, should they continue, it is subsequently ruled that similar or identical requests are improper, then these request are also improper, duplicative and unduly burdensome. If, on the other hand, the ruling is to produce the documentation, then these requests are likewise duplicative, burdensome, and hence improper.

Document requests. All the following documents are hereby requested pursuant to the foregoing definitions and conditions:

1. All documents received or possessed by the LLCs or any representative (current or past, including specifically Mr. Steve Hyman) of the LLCs from James Riffin relating in any fashion to the Harsimus Branch, including but not limited to

disposition of property in the Harsimus Branch and potential or actual lawsuits or regulatory disputes concerning the Harsimus Branch in whole or in part, or relating to AB 167 (Sub-no. 1189X), other than legal pleading filed with the Surface Transportation Board in AB 167-1189X.

ANSWER: Objection. The request speaks its own objection by excluding documents relating to legal pleadings in the present STB proceedings, and by specifically including documents related to other lawsuits or regulatory disputes. By definition, the documents sought are not related to the present proceedings and the request for all documents of any nature concerning the Harsimus Branch sent or received to or from James Riffin is not only overbroad, but premised on an improper basis that any communication with James Riffin is an issue in these proceedings. Subjecting such documents to a blanket discovery request is an improper attempt to intimidate and harass the LLCs (and Mr. Riffin), and to prevent normal discourse and the full exercise of First Amendment Rights of free speech, communication and association with another party in these proceedings.

2. All documents (not otherwise provided pursuant to Doc. Req. 1) sent to or received by Mr. Steve Hyman or any other past or former manager, officer, employee, attorney or representative of the LLCs from Mr. James Riffin relating to the Harsimus Branch,

other than legal pleadings filed with the Surface Transportation Board in AB 167-1189X.

ANSWER: Objection. The LLCs repeat their objection to request #1, above. It is entirely improper to cast a document request, as this one is cast, for basically “everything else”. Further, the request seems to suggest that the first request may be limited when it does not appear to be, and to the extent that it is some sort of catch-all request, it lacks the specificity and discrete focus required by STB discovery rules.

3. All documents relating to any financial assistance by the LLCs, directly or indirectly (such as, but not limited to, through any current or former manager, representative or agent), for the support of James Riffin for purposes of preparing for or making an “offer of financial assistance” in AB 167 (Sub-no. 1189X), or for purposes of preparing for or pursuing civil litigation relating to any part or alleged part of the Harsimus Branch.

ANSWER: Objection. The LLCs repeat their objections to the first two requests, above. The aspect of the request that refers to pursuing other civil litigation is per-se outside the scope of issues in these proceedings. Hypothetically, if the LLCs chose to support an OFA on property of Conrail that would have no impact upon their properties, or in some other fashion as an alternative strategy, they would be free to

do so. The STB has already ruled on November 2, 2015 in these proceedings that discovery in exempt abandonments is to be limited. That closes the door to this and all similar requests since the STB Director of Proceedings will decide each OFA if, as, and when filed. Therefore there are no pending or anticipated proceedings in which the requested information is either discoverable or relevant.

4. All documents relating to meetings between Mr. Steven Hyman, Mr. James Riffin and "Forest City" (the developer of property in Jersey City east of Marin Boulevard and south of Sixth Street), or any other developer of property in Jersey City in connection with any portion of the Harsimus Branch or property adjacent thereto.

ANSWER: Objection. A similar request for development related information was ruled out by the STB on November 2, 2015 in the context of documents between the LLCs and Conrail. This is the same improper request, but for a different developer, in this case one that is not even a party as is Conrail. The request seeks information concerning a developer that has been sued by Mr. Riffin in a Civil Action in the US District Court for the District of New Jersey under Docket No. 16-cv-4433. No party to that suit, other than the plaintiff, Riffin, is a party in the present STB proceedings. There is no issue pending before the STB to which any

meeting involving “Forest City” or “any other developer in Jersey City” is even remotely relevant. To the degree that the City, Rails to Trails and the Embankment Preservation Coalition seek discovery in litigation in which they are not involved, the request is irrelevant and an abuse of STB discovery procedures.

5. All documents manifesting the resignation of Steven Hyman as manager for the LLCs, including documents sufficient to show the date of and reason for such resignation.

ANSWER: Objection. This request seeks the same information as interrogatory #1 served concurrently with these document requests and is duplicative thereof. The requested information is not relevant to any issue in these proceedings. As such it is beyond the scope of discovery provided for in 49 CFR §1114.21. Steven Hyman, individually, is not a party to any proceeding before the STB, nor any related judicial proceeding. His personal status, condition, or authority is not an issue, nor has it been heretofore. Therefore, the interrogatory is irrelevant and beyond the scope of proper discovery in these proceedings. Without waiving any objections, the LLCs have established in these proceedings that Steven Hyman is no longer their manager. See concurrent Requests for Admissions #1, Answer and Objection.

6. All documents bearing on any continued agency or role of Mr. Steven Hyman for the LLCs or ownership interest or expectancy by Mr. Steven Hyman in the LLCs or any portion of the Harsimus Branch or property adjoining the Harsimus Branch.

ANSWER: Objection. The LLCs repeat their response to the foregoing request for documents. See also the General Objection, Objection to request #5, above, and #7, below, and Answer and Objection to concurrent Requests for Admissions #1.

7. Documents showing a guardianship over Mr. Steven Hyman, or a power of attorney for any individual to act on behalf of Mr. Steven Hyman, in AB 167-1189X.

ANSWER: Objection. Steven Hyman is not a party to these proceedings and it is improper to direct interrogatories to his individual condition or interest as an individual not within the jurisdiction of the STB in Exempt Abandonment proceedings. The personal nature of the inquiry, seeking private personal, business or medical information on non-issues, is entirely outside the scope of proper discovery in these proceedings. The requests appear on their face to be issued for the purposes of harassment, embarrassment and to increase the personal and financial burdens of the LLCs and their owner, Victoria Hyman, and upon Steven Hyman.

8. Documents sufficient to indicate who, if anyone, is authorized to act as legal counsel for Mr. Steven Hyman in AB 167-1189X.

ANSWER: Objection. Mr. Steve Hyman is not a party in the referenced proceedings and therefore the question states a false premise that he has a cognizable personal, financial or business interest the Harsimus Branch and that he is, or will be, a party to these proceedings. The question is improper and seeks non-existent information.

Respectfully submitted,

s/

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
206-546-1936
Fax: -3739
Email: c.montange@frontier.com
for Interveners City et al

Certificate of Service

I hereby certify service on 11 August 2016 of these document requests by email attachment addressed to dehorgan@lawwmm.com and by express delivery (next day delivery), to Daniel Horgan at his address of record.

Charles H. Montange

The Foregoing Answers and Objections to requests for production of documents 1 through 8 are given on behalf of the eight New Jersey Limited Liability Companies first listed above, that is 212 Marin Boulevard, LLC, through and inclusive of 446 Newark Avenue, LLC. As to those individuals and the entity not parties to these proceedings that have been included within the definition of LLCs given with these requests, service of discovery requests upon counsel for the eight referenced parties is not sufficient to compel discovery from non-parties or individuals.

DATED: September 1, 2016

S/ DANIEL E. HORGAN

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CERTIFICATION OF SERVICE

I hereby certify and declare that on this date copies of the foregoing answers and objections to interrogatories have been served upon all counsel in these proceedings and upon Eric Strohmeier as CNJ Rail and James Riffin. Service has been made by means of deposit in US First Class Mail, and courtesy copies have been provided on this date by e-mail.

S/ DANIEL E. HORGAN

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Exhibit C

to

Reply to City et al.'s Motion to Compel Discovery from
LLC Intervenor
(Interrogatories, Document Demands, and Requests for Admissions)

And

Cross-Motion for Sanctions Pursuant to 49 C.F.R. § 1114.21(c)

By the LLC Intervenor

In

STB Docket No. AB-167 (Sub-No. 1189X)
CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
HUDSON COUNTY, NJ

STB Docket No. AB-55 (Sub-No. 686X)
CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No.306X)
NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

E-mail exchanges between Daniel E. Horgan, Esq. (counsel to LLCs), and Charles Montange, Esq. (counsel to City et al.), including attachments thereto, dated from September 1, 2016 through September 20, 2016

Subject: LLC response to Document Request

Date: Thursday, September 1, 2016 at 3:00:41 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

CC: James Riffin, Eric Strohmeier, Robert Jenkins, Adam Sloane

Dear Charles, Our responses and objections are attached at the end of the letter and its exhibits that comes to you with this e-mail.

As the letter requests, and as Judge Dring has strongly suggested, we should make every good faith effort to resolve our discovery issues. Therefore, please call me after Labor Day to discuss, once you have had an opportunity to review this.

Have a good Labor Day weekend.

Dan Horgan

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Email #1

Subject: Discovery response on behalf of the LLCs

Date: Thursday, September 1, 2016 at 4:23:01 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

CC: Robert Jenkins, Jim Riffin, Adam Sloane, Eric Strohmeyer

I would be absolutely delighted to discuss deficiencies we see in the LLCs' response to our various discovery requests. Your email suggests you are already off for the weekend, and wish to discuss the matter after Labor Day. But are you prepared to talk tomorrow, Friday?

Subject: Re: Discovery response on behalf of the LLCs

Date: Thursday, September 1, 2016 at 9:21:34 PM Eastern Daylight Time **From:** Horgan, Daniel

To: C. Montange

CC: Robert Jenkins, Jim Riffin, Adam Sloane, Eric Strohmeyer

I suggested after Labor Day because I can't do this tomorrow. Not that I have the luxury of an extended long weekend; I don't. It's just that there are other things pressing. Sorry. let's talk on Tuesday; give me a call when you can do it then. That way, we can discuss all of the issues, especially the relevancy of any of this, and why we should need discovery on things that are already well established in the record. Also, please note that we have offered to stipulate some things, so perhaps we can make progress by doing some of that. In the meantime, enjoy the weekend. Take tomorrow off!

Email #3

Subject: Re: Discovery response on behalf of the LLCs

Date: Thursday, September 1, 2016 at 9:46:45 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

CC: Robert Jenkins, Jim Riffin, Adam Sloane, Eric Strohmeyer

We find the basic positions taken by the Hyman interests inherently contradictory, over time, and also inconsistent with known facts. Perhaps this can be resolved, at least in part by stipulations, but the contradictions and inconsistencies which we perceive render stipulations difficult. The request for admission, to which you objected in total, was an effort to be consistent with reality and yet based in large part on what you previously indicated was appropriate for stipulations. Given your limited availability, I will endeavor to indicate our position in writing by Tuesday noon. We do wish to move forward.

Email #4

Subject: LLCs' discovery response

Date: Monday, September 5, 2016 at 8:48:18 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

This is in response to your request that I wait until Tuesday, Sept. 5, to attempt to work out with you your general refusal to produce documents, make admissions, or answer interrogatories. I indicated I would send you an email to initiate discussion.

In your email of September 1, 2016, you attach a letter which you assert is for the purpose of establishing a substantive basis for your (LLCs') objections to discovery. I will start with that email.

The letter indicates that you do not view Mr. Riffin as anything other than a distraction, and further profess he does not guide the LLCs.

I am certain you are aware that Mr. Riffin accompanied Mr. Hyman to meet with Forest City. I have already told you that Mr. Hyman informed reps of Forest City that he would compensate Mr. Riffin if Mr. Riffin's efforts proved beneficial to his interests. In any event, Mr. Hyman obviously is carrying on a friendly and robust email correspondence with Mr. Riffin bearing on how to prevail with respect to the Harsimus Branch. Unfortunately, this contrasts with your presentation. It thus strongly appears that Mr. Hyman is pursuing a course of conduct with Mr. Riffin of which you are unaware, or concerning which you choose to ignore or at least not to acknowledge to us. Several conclusions flow from this: first, even if you are unaware of Mr. (and Mrs.) Hyman's dealings with Mr. Riffin, City et al is entitled to discovery. You will not be the first lawyer in history unaware of all the relevant dealings of his client. If, on the other hand, you are aware but choose to ignore or to decline acknowledgement of those dealings, then your letter to me of September 1 is misleading and we are nonetheless entitled to discovery.

Second, in light to the apparent dealings of the Hyman interests with Riffin, it is not clear to us that those interests are following your advice, or that your representations are any longer correct, or that you in fact can represent both the LLCs and Mr. Hyman any longer.

Third, our view of Mr. Riffin is amply of record, as you indicate. We certainly agree that Riffin is a distraction, but we view the LLCs as at least as great a distraction from appropriate and lawful resolution of the Harsimus. The dispute at heart is over the proper remedy for Conrail's unlawful de facto abandonment of a clear line of railroad. The LLCs, who claim that the abandonment and sale to them was based on fraudulent misrepresentations are not seeking to restore status quo ante but to exact super-normal compensation from the public for the fraudulent behavior. Conrail claims that the LLCs knew or should have known about the fraud at all relevant times. Based on what was obvious to me as far back as December 2005 when I came into this case, I would have to agree that the Harsimus Branch was obviously and at all relevant times a regulated line subject to STB abandonment jurisdiction. To reward either Conrail or the LLCs for unlawful abandonment and sale would amount to awarding compensation for an unlawful act. City et al would much rather focus on legitimate remedies to the public rather than profiteering by private parties from acting unlawfully. But STB has not set a schedule for that, and in any event, has allowed Riffin into the proceeding over the objection of Conrail and ourselves (the LLCs did not take a position), and of course the agency allowed the

Email #5

LLCs to intervene. In short, we must deal with distractions because they are interfering with legitimate remedies, or at least positioning and litigating to do so.

The only document production by the LLCs was a very limited set of Exhibits that you furnished for the purpose of arguing that Mr. Riffin was a distraction. To the extent those documents, or your letter, or your objections contain your rhetoric about legal positions or affiliations, or otherwise, City et al agrees with none that are detrimental to City et al's interests. However, the exhibits are helpful in that they indicate you (LLCs) have received a lengthy legal/demand memo dated Oct 15, 2015, that Riffin sent to Forest City. This adds to information indicating coordination between Riffin and the Hyman interests in respect to their litigation strategy, whether or not you were involved.

Again, please understand that your statements do not define what your client is doing at least when your client is doing other than your statements. In order to discuss the matter further, we need to know whether you have examined the emails sent to or received by Mr. Hyman, Mrs. Hyman, and Riffin, and whether you have examined emails sent to Mr. Riffin or received from Mr. Riffin by other representatives of the LLCs.

In addition, please understand that you yourself have stated that due to a diagnosed medical condition, Mr. Hyman from some date (undisclosed) is not capable of making business decisions for the LLCs. You yourself have thus called into question Mr. Hyman's competency. But calling into question his competency by no means permits the conclusion that his actions are not germane to the proceeding. This is especially the case since I understand you to say that there is no paper indicating he has resigned from the position of manager of the LLCs. Based on his actions in connection with Forest City, he is still holding himself out as the manager, or at least the representative, of the LLCs, and Riffin has told me that in all events, Mrs. Hyman will not act to controvert him. It is highly germane to City et al, and to STB, to understand Mr. Hyman's influence over the LLCs, and since he evidently still has influence, his competency. These matters, though personal, are relevant to the proceeding, because the LLCs have held the proceeding up, and have repeatedly declined reasonable settlement proposals, for the past eleven years. And if Mr. Hyman remains in charge of the LLCs, as he appears to be to the world, but you contest his competency (as you have in statements to me) as well as his apparent relationship to Mr. Riffin, City et al must express concern over whether you can continue to represent both him and the LLCs, or perhaps either.

Again, contrary to your comments, these matters are highly relevant. We request a full and complete response to our discovery requests.

Subject: Re: LLCs' discovery response

Date: Tuesday, September 6, 2016 at 11:56:47 AM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Dear Charles,

Thanks for deferring this discussion from the Labor Day weekend to today. Since we have a three-hour time difference, perhaps we can discuss this after noon Eastern Daylight Time (EDT), which I understand, would be the 9:00 a.m. start of your day in Seattle.

Since we need to address all issues, I have identified the following points from your e-mail to me of yesterday evening:

1. **Work Product and Other Privileges.** You say that "in order to discuss this matter further" you need to know if I have examined my clients' e-mails – presumably the ones you requested. The paragraph that follows that statement essentially gets into whether the LLCs are following the legal advice we give them and suggests that some perceived conflict may require us to withdraw as counsel. Since your discovery requests do not specifically ask us to disclose privileged information (as we see it), then these sorts of requests, statements and suggestions are beyond the scope of what we have to address ourselves to. Let's skip those and get to the issues.
2. **Mr. Hyman.** His medical and mental health conditions have not been put in issue by the LLCs in these abandonment proceedings. Even if, as you say, he is "carrying on a friendly and robust email correspondence with Mr. Riffin bearing on how to prevail with respect to the Harsimus Branch", we fail to see how that matters to any resolution of the issues. Communicating with Mr. Riffin is not a legal or regulatory offense (though some would have it so.) Having left the management of the LLCs' affairs to others, Mr. Hyman is still free to speak with whom he chooses. And, I have not claimed, inferred or stated that he lacks legal competence; that's your statement, not mine. For the record, as far as I can see, he is fully competent in the legal sense under the laws of the State of New York (his residence). But he is no longer the LLCs' manager or agent, nor a party to the STB proceedings. Therefore, his personal medical condition, diagnosis, etc., are not issues in the case. You may be aware that, in the past, spokespersons for the City (your client) have made the unfounded statement that he is "delusional" and otherwise publicly assailed him on a personal basis. I believe, for what it's worth, that personal animus continues. Mr. Hyman should not be subjected to personal attacks, or defamatory statements. We can litigate the STB proceedings without any of that. We need to discuss these requests and the need for them.
3. **Forest City.** Mr. Hyman did attend a meeting with Mr. Riffin and representatives of Forest City and others. We don't see how this would be any different from the requests that the STB ruled out in its November 2, 2015 decision. We need to discuss why Forest City has anything to do with this.
4. **The Issues.** Much of the disagreement seems to be over the issues now pending before the STB. The November 2, 2015 STB decision excluded issues of what you refer to as unlawful transfer of the Harsimus Branch. The Branch was transferred in 2005 and no one, especially the STB, has sought to do much about it. The City certainly hasn't, except to recite in pleadings, again and again, that the sale was illegal. Those are the facts of the case. You may have your opinion, but we have to operate on the facts as they are. The issues are the Historic Review, which is now fully underway, and OFAs at a future date. We feel that all proposed OFAs are meritless, and that there is no possibility of rail service, but the STB will decide that on the facts. You, CNJ Rail, and Riffin will argue that

out. Our position will be that there is no basis for a valid OFA in this matter. The STB has ruled that OFA discovery is limited and you already have what the STB feels you are entitled to get. How is that not the end of the line on discovery?

5. **Delay and Settlement.** You or your clients may not like the LLCs' positions on settlement, litigation, or whatever. That's obvious, as you characterize it as "profiteering" and "unlawful". We see it differently. But any "profit" that the LLCs may make is not an issue. The STB has passed on the "unlawful" issue (see above #4). All that leaves is the "distractions" of Riffin and the LLCs being in the case; but that's the STB's decision. Discovery won't change that.

SUMMARY

We need to address:

- Why the City needs to know Steve Hyman's condition – we've already given his status.
- Why the universe of our clients' communications, including relating to Riffin, Forest City, or any of that, is different in character from that which the STB ruled not subject to discovery last November.
- What you see as the issues to be addressed in the remainder of the STB proceedings – the specific issues – so that we can fully understand how and why you feel the discovery you seek is somehow relevant.

It's our position that we need to address each of these in order to make the full, good-faith effort to resolve these matters without resort to further discovery motions. If we can at least narrow issues, or agree what it is that we disagree about, that will be an important and necessary step.

Talk to you a little later.

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Email #6, continued

Subject: When is a good time to speak on the phone?

Date: Tuesday, September 6, 2016 at 12:42:48 PM Eastern Daylight Time

From: Horgan, Daniel

To: 'C. Montange'

It's now 12:40 EDT here on the East coast.

Daniel E. Horgan, Esq.

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Direct: 201-330-7453

Fax: 201-863-7153

Subject: Re: LLCs' discovery response

Date: Tuesday, September 6, 2016 at 1:20:33 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

I wished first to consider the material which you emailed me, and to respond.

1. If you decline even to indicate whether you have examined the emails of the representatives of your client, it is not clear how discussions can be productive. In general, if one objects that discovery is burdensome, the other side offers to cut it back, but if you will not even tell us if you have examined your clients' emails, we cannot have a meaningful discussion. To say to us that we must file additional discovery about who has documents (that is relatively obvious) and so forth is just stalling.

2.-3. You put at issue Mr. Hyman's medical condition when you stated to me that he had a diagnosed medical condition, and was no longer manager of the LLCs. But you deny that there is any documentation at the LLCs that he is no longer manager.

I appreciate that you now acknowledge in writing that Mr. Hyman and Mr. Riffin together met with Forest City. Both he on behalf of the LLCs through you and Mr. Riffin, and perhaps Riffin independently, seek to use STB regulation to extract money from others due to the illegal sale of the Harsimus Branch to the Hyman interests without required prior STB abandonment authorization. That is now an apparent joint project in connection with Forest City.

On what basis do you claim that Hyman is not an agent or manager of the LLCs? We have asked for this information but you refuse to answer. Finally, I have been sued by your clients personally; your client (Mr. Hyman) has threatened to bankrupt persons who get in his way, acknowledging same on the record; and I view much of your rhetoric as ad hominem against me personally. I do not need a lecture on avoiding personal attacks on Mr. Hyman, as I never make them. You were the one that indicated he was no longer fit to make long term business decisions for the LLCs. You did it in an evident effort to disavow his activities as on behalf of the LLCs. I am simply following up. At this time, it appears to us that Mr. Hyman continues to set the policy for the LLCs and that your statements are incorrect or misleading, and in all events you refuse to provide any corroboration or evidence for the proposition that he is neither manager nor an agent for the LLCs (no such evidence you say exists, other than, you state, the fact that Mr. Hyman has a diagnosed medical which you refuse to make available). You cannot really expect us to ignore what Mr. Hyman is doing.

4.-5. The discovery disagreement is over the issues in the case. Our discovery is germane to your latest positions in connection therewith, and with respect to the apparent parallel conduct or actual agreement that exists between Mr. Hyman and Mr. Riffin. Nothing in an STB decision excludes those issues. As to invalidity of the deeds, City et al could move for that, but there are multiple grounds, including NHPA grounds on which the agency is still working, so that a motion has seemed to us premature. Candidly, on the basis of STB's regulations, the OFA process by law is a much faster way to pursue invalidation of the deeds. But STB vacated its regulatory schedule and has failed to issue a new schedule. As you yourself have pointed out, City et al and Conrail certainly urged STB to set a schedule. In the meantime, your client has repeatedly sued the City to stop it from proceeding at STB. City et al would vastly prefer STB to discharge its regulatory responsibilities in a lawful fashion than leave City et al exposed to your litigation and now

Email #8

Riffin's machinations. You, Mr. Hyman and Mr. Riffin all seek to manipulate STB jurisdiction rather than remedy the illegal de facto abandonment.

You can call me now (about 10:20 AM). In roughly an hour, I have another appointment.

Email #8, continued

Subject: Re: LLCs' discovery response

Date: Tuesday, September 6, 2016 at 1:25:45 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

I'm on a call right now, but if time permits before 2:30 (my time –11:30 yours) I'll call.

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Subject: Re: LLCs' discovery response

Date: Tuesday, September 6, 2016 at 1:28:02 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

I am out at 11:30 to 12:30.

Subject: Re: LLCs' discovery response

Date: Tuesday, September 6, 2016 at 1:28:51 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Calling now; off the phone

Email #11

Subject: Stipulation

Date: Wednesday, September 7, 2016 at 3:13:33 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Charles,

After our discussion yesterday, I took a shot at a simple, straightforward stipulation that cuts off any support for Riffin. Here it is.

I have not yet shared this with my clients since I would like to see if we can't make this as easy as possible. That may help smooth things out a little and lessen the agitation that we discussed yesterday. If we can agree on this (you and I) then we can probably get it signed fairly quickly and dispose of the outstanding discovery without getting into personal issues with Steve, and so forth.

Please review this and let me know what you think.

Thanks,

Dan Horgan

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STIPULATION

212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC, (hereafter the “LLCs”); and, the City of Jersey City (hereafter the “City”), as parties having an interest in or participating in the proceedings concerning Offers of Financial Assistance (“OFA”) before the Surface Transportation Board (the “STB”) in Docket No. AB-167-1189-X (the “Proceedings”); and, Victoria Hyman, Steven Hyman, and NZ Funding, LLC, individually and separately, having an interest in the LLCs (hereafter collectively referred to herein as “the Hymans”); they have agreed and stipulate as follows:

1. The LLCs, and the Hymans do not and will not support any OFA that includes or involves any of the eight properties owned by the LLCs (the “Properties”), including specifically any such OFA that may be filed by James Riffin or any person or entity affiliated with James Riffin in any proceedings involving the Harsimus Branch, including any OFA filed by James Riffin in AB 167-1189X. The LLCs and the Hymans will not provide Mr. Riffin, or anyone, with any financial or other assistance, reward, compensation or reimbursement for the filing of such an OFA, or to satisfy terms and conditions set by STB for such an OFA, or for any appeal or petition arising therefrom.
2. In light of the foregoing stipulations in paragraph 1, the City agrees and stipulates that its pending discovery requests to the LLCs in AB 167-1189X have been fully satisfied.

Draft Stipulation attached to Email #12

3. This Stipulation shall be used only to establish to the STB in AB 167-1189X, any related proceedings henceforth commenced at the STB, or in any appeal or petition arising directly therefrom, that the LLCs and the Hymans are separate, apart and fully independent from James Riffin and that they categorically reject any OFA with respect to the Properties.

DATED: ___ September 2016

For the City of Jersey City:

**BY: _____
Charles H. Montange, attorney**

For the LLCs:

**BY: _____
Daniel E. Horgan, Attorney**

**BY: _____
Victoria Hyman, Managing Member**

Individually:

Victoria Hyman

Draft Stipulation attached to Email #12

Steven Hyman

And-

NZ Funding, LLC.

BY: _____
Victoria Hyman, Managing Member

Draft Stipulation attached to Email #12

Subject: Re: Stipulation

Date: Wednesday, September 7, 2016 at 4:58:05 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

I cannot recommend that stipulation to my clients. First, it stipulates a fiction. I already know that Mr. Hyman has recently represented to Mr. Coakley's clients that he intends to compensate Riffin in the event of a favorable result flowing from Riffin's OFA. They are obviously either in agreement, or in a scheme involving parallel conduct to their mutual advantage.

Second, if the stipulation is meant to renounce any existing or future arrangement between the Hyman interests and Riffin, then how is it enforceable by the City? Mr. Hyman or the LLCs could violate it with impunity. Your stipulation does not really resolve discovery issues, and as framed is a kind of unenforceable disavowal of Riffin's OFA for purposes only of AB 167-1189X.

Third, it does not preclude the Hyman interests from compensating Riffin if his OFA results in a favorable "settlement" or shake down or whatever you or Riffin wish to call it between Riffin/Hyman and Conrail/Forest City which is how Riffin (in a document you furnished) appears now to be posturing.

Fourth, you have told me that Mr. Hyman is no longer manager or agent for the LLCs, and is no longer of capacity to make business decisions for the LLCs. Your stipulation does not address this situation at all. Mr. Hyman thus can continue to take actions with Riffin or others binding on the LLCs as their agent in fact. Indeed, if he has past deals with Riffin, or future deals, they would be enforceable against the LLCs notwithstanding the stipulation, so the only effect of the stipulation would be that the City is precluded from discovery of past and future actions by Mr. Hyman against its interests.

The fundamental problem for the LLCs at this point is the very point you view as so sensitive. If Mr. Hyman no longer has capacity to speak for the LLCs, that has to be acknowledged publicly. You need to indicate he is no longer manager or agent. That acknowledgement, if general, and not confined to a stipulation limited to an STB proceeding, may protect the LLCs from deals he makes with guys like Riffin. Until then, his actions are facts that cannot be stipulated away, now or in the future, at the very least without risking more litigation and uncertainty.

In addition, it seems to me that Riffin will have to be a party to the kind of stipulation you envision, because he is the guy running in parallel with Mr. Hyman.

Finally, I am not certain even the guidelines below will work, for you indicated to me that even if Hyman settled with Conrail or whomever else he and Riffin have targeted, Mr. Hyman wants to sue the City for civil rights violations, and you implied that accounts for the \$40 million to \$200 million demands that I hear about. You indicated that this flows from the Mayor's statement that he would not make a gift to Mr. Hyman. I do not even begin to understand this set of claims, and when a lawyer makes that kind of pronouncement to me, it makes me reluctant to agree to any discovery limits, including by stipulation, because I no longer feel I understand the theories, much less the demands and actions, of the other side. In this case, if you are pursuing or preserving claims because a man whom you say lacks capacity to make business decisions is demanding it, I have to ask how you can claim that he lacks capacity for business decisions, since he is governing your own conduct, and how you feel you can advise him on entering stipulations, or how

you can convince me he will be legally bound by them if he does sign them.

Subject to the above, a set of legitimate stipulations we could consider, with revisions, would run something like this:

1. Mr. Hyman has a diagnosed medical condition such that he no longer has capacity to serve as manager or agent of 212 Marin Boulevard LLC, et al, or to enter into any undertakings relating to the property or legal interests of 212 Marin Boulevard LLC, et al, for any purpose, directly or indirectly. As of [INSERT DATE], Mr. Hyman is no longer manager or agent of 212 Marin Boulevard LLC, et al. 212 Marin Boulevard LLC, et al., hereby disavow and renounce any contracts, commitments, or representations made by Mr. Hyman on their behalf after that date with respect to Mr. Riffin, or any other person or entity, unless those contracts, commitments and/or representations are confirmed in writing by Victoria Hyman on or before [INSERT DATE].

2. Victoria Hyman hereby represents to the world that as of [INSERT DATE] she is the manager and sole agent for 212 Marin Boulevard LLC, et al (including NZ Funding).

3. Victoria Hyman, Steve Hyman, 212 Marin Boulevard LLC et al, on behalf of themselves and any other entity under their management, ownership or control, hereby stipulates that they will not provide financial assistance to James Riffin in connection with any offer of financial assistance (OFA) filed by said James Riffin, or any entity affiliated with Mr. Riffin, in any rail abandonment proceeding, nor will they provide any form of assistance to Mr. Riffin in connection therewith or in connection with any litigation or appeal that Mr. Riffin files against a third party; nor will they pay any commission, bonus, compensation, or share of any settlement with said Mr. Riffin.

4. Mr. Riffin stipulates that he has no agreement with Victoria Hyman, Steve Hyman, 212 Marin Boulevard LLC et al for any assistance or compensation in connection with any OFA which he or others have filed, or in connection with any litigation or appeal against a third party which he has filed, or in the future may file, and that he under no conditions will accept assistance or compensation of any sort, directly or indirectly, from Victoria Hyman, Steve Hyman, 212 Marin Boulevard LLC et al, or any entities under the management, control or ownership, directly or indirectly, of the above, for any purpose or under any circumstance. Mr. Riffin stipulates that he will not rely on the Hyman interests to show financial responsibility for any OFA.

5. In the event this stipulation is violated, Mr. Riffin and the Hyman interests agree to transfer by quitclaim deed all interests which they claim in the Harsimus Branch to the City of Jersey City for \$3 million, subject to such STB authorizations as may be required. Mr. Riffin and the Hyman interests agree to make all appropriate filings with STB and any other appropriate forum to this end.

Email #13, continued

Subject: Re: Stipulation

Date: Wednesday, September 7, 2016 at 5:07:03 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Initially, this seems much broader than our last discussion. I'll look at it overnight and follow up tomorrow.

Email #14

Subject: Re: Stipulation

Date: Wednesday, September 7, 2016 at 6:43:47 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

The notion of stipulations to resolve a discovery dispute is tough, when the discovery flows from actions by an agent of the LLCs whose attorney has said lacks capacity to make business decisions, but apparently is continuing to make business decisions and act as agent of the LLCs and whose power/ability/discretion to continue to so make and so act is not limited by the stipulations in any enforceable way. I regret if you hoped for our agreement to a set of stipulations that are counter-factual or ignore the facts.

The larger question for you is case management. If the agent of the LLCs is, as you say, medically incapacitated, then that needs to be disclosed to the world, and the LLCs (and you) presumably need to substitute an agent that is neither medically incapacitated nor under the de facto control of someone so handicapped. Otherwise no one can deal with your side in a reliable fashion by contract or otherwise, or, put another way, Mr. Hyman may be led astray by individuals like Mr. Riffin or the next such person who comes along. It seems to me that you and your firm need to work something out with Victoria Hyman (assuming she in fact owns and controls the LLCs), but I do not know if that is even possible, for she may feel the situation too sensitive to handle with her husband, which of course means that he is truly and will continue to be the agent of the LLCs. That is why it may be best simply for the LLCs to respond to City et al's discovery without objection, so that the issue (sensitive as it is) will come out into the open and once in the open get resolved.

I acknowledge you are in an awkward situation. That is why I have suggested to both Conrail and the City that given Mr. Hyman's medical situation but indications that he can still enjoy life, it seems irrational for your side not to settle. I apologize if because of this they called you or Mrs. Hyman and you or she found this annoying. Moreover, you have now explained to me in effect that Mr. Hyman wants to sue for civil rights violations because he is annoyed with the City or the Mayor over the Harsimus Branch dispute, and you have hinted that is why he wants such huge amounts of money. Leaving aside my lack of understanding of the merit of any such cause of action (the underlying action that Mr. Hyman feels abusive flows from the City's undeniable First Amendment right to petition the federal government, after all, concerning a rail line subject by the LLCs' admission to STB regulation), this simply underscores that Mr. Hyman remains the player in charge, despite the limits on his capacity flowing from the diagnosed medical condition of which you advised me. This is another way of saying that the discovery we seek is quite relevant and hardly burdensome.

Email #15

Subject: Re: Stipulation

Date: Thursday, September 8, 2016 at 4:34:19 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Dear Charles,

It appears that we are not making progress in resolving discovery issues. I have no wish to argue with you about the alleged statements, rumors, or the like concerning Mr. Riffin and his litigation against Forest City. That matter will resolve itself without our help. And, if there is any legitimate need in that litigation for any of the discovery you now seek, the Federal Courts will order it to be had by the parties in that case, so we need not concern ourselves about that. Those issues belong to others.

As to the civil rights action I had mentioned to you as a larger problem for the City than its railroad issues, that action was filed in the New Jersey Superior Court in 2005. The docket number has been repeatedly referred to in various proceedings of which you must surely be aware. There too, if some issue for that case needs discovery, the City can agree with us that the stay of proceedings now in place should be lifted.

Then, as to your request to involve Jim Riffin in any stipulation, especially as to what he, or we, would do in the future, we are not in "cahoots" with Riffin in any "shakedown" or anything like that. The name-calling doesn't help either. He's not our guy, and he doesn't seem to be yours either. Nor does Strohmeier seem to be on your side, considering that he's given a declaration just filed in the US District Court in Newark on behalf of Riffin! The path to resolving discovery disputes between the City and the LLCs does not involve either of them.

Where that leaves us is almost back where we started, except that we have proposed a stipulation that, contrary to what you said, is self-enforcing. It would bind the LLCs in AB-167-1189-X to their position vis-a-vis Riffin, which we understand to be your concern. The other issues of Riffin's third-party litigation, civil rights discovery, and joining with Riffin are not relevant to any issue before the STB. We've asked, more than once, for you to show us how they are relevant, but every explanation has wound its way through hearsay, rumors, other litigation, potential litigation, and just about everything except what's now before the STB. And, even if Steve Hyman promised Jim Riffin the moon if he were successful on an OFA, that "fact" is entirely at odds with the reality one can easily find on the STB record. That record, as we laid out in our recent letter to you, shows that everyone has been told that the LLCs oppose all OFAs for the Embankment. That's our position.

It is also our position that Mr. Hyman has resigned. You have taken that to mean that he is legally incompetent, from which you have constructed all sorts of problems for the LLCs. That is not proper, or appropriate. There is no issue, nor will there be, before the STB as to Mr. Hyman's medical condition, nor his authority. We will not engage further on that issue as it is entirely inappropriate for any further discussion with you, much less discovery.

Unless you can demonstrate to us a basis for relevancy of your discovery requests, we cannot comply. If you insist on relying upon statements by Forest City, or others, we will consider making our own independent investigation of those, but only if you are willing to represent to us that the issue is relevant – and explain, clearly, how that is the case. Nor do we feel it appropriate to discuss settlement without the direct participation of the City, as it is the City that has the greatest stake in this matter, and also the clear ability to resolve all issues, should it choose to do so.

Nonetheless, we would ask you to revisit our proposed stipulation as we feel that it more than addresses the issues you have raised in your suggested, but overbroad and burdensome

version of the stipulation sent yesterday evening. If you are willing to do that, we can satisfy any legitimate concerns in the STB proceedings, and perhaps a little more. If you are not, then we must caution you that we would view any motion seeking further responses from the LLCs to your discovery requests as sanctionable and would seek appropriate relief by way of protective order and award of attorney's fees for our expenses in such circumstances.

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Email #16, continued

Subject: Re: Stipulation

Date: Thursday, September 8, 2016 at 5:56:04 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

Mr. Horgan, I fear you have gone off track. Whether or not Mr. Hyman has resigned, you now seem to acknowledge that he continues to operate as agent for the LLCs and is in ultimate charge of the LLCs strategy. This is different from what you earlier told me, which was that Hyman was irrelevant as he no longer had charge of LLC policy so his connection to Riffin should be disregarded. You need to be clear and consistent in order to get stipulations worked out, or much of anything else. Mr. Hyman brought Mr. Riffin to a meeting with Forest City, and the purpose was to use STB processes in order to obtain a deal for non-rail purposes. That is relevant. Respond to the discovery.

As to the civil rights claim, you now cite a suit in 2005, but you told me that Mr. Hyman felt abused by Mayor Fulop. He was not Mayor in 2005. I remain confused at what possible civil rights claim your client had in 2005, or now, given STB's preemptive and plenary jurisdiction, which you now appear to admit. But since you have unexplained legal theories, it does make stipulations on discovery difficult. The City is entitled to pursue its federal remedies and to rely on Conrail and the LLCs acting in accordance with preemptive federal law. So far, neither Conrail nor the LLCs are in compliance. In addition, there is the applicability of NJSA 48:12-125.1.

As to Hyman supporting Riffin's OFA and your contrary representations to STB, that is an issue that troubles me, for I do not know how you can make those claims, unless they are understood to be for litigation purposes only and not binding on the LLCs. After all, you do not run the LLCs; Mr. Hyman does. Lawyers go astray as do tribunals if they rely on legal fictions or incorrect assumptions. I am only doing my job by showing if the facts on the ground are not what you are representing to STB. I note that you certainly purport to claim I am misrepresenting reality in connection with my representations concerning the City's interests in the Harsimus Branch. You have taken massive discovery against the City in your effort to prove your claims.

Until and unless your side chooses to recognize that City et al have a legitimate case, and are not simply some kind of obstreperous unmeritorious roadblock, or some obstacle that can be bulldozed away, it appears unfortunately difficult to deal with the LLCs even on discovery matters.

Email #17

Subject: Re: Stipulation

Date: Friday, September 9, 2016 at 10:09:59 AM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Charles,

Is “off track” intended to be a pun? The track I would like to stay on is the one that leads to relevant facts. Facts are the purpose of discovery, not legal theories, nor “legal fictions or incorrect assumptions”. If we are willing to stipulate facts, the act of stipulation binds the LLCs to those facts and we cannot take a contrary position in the proceedings. As you are surely aware, a stipulation binds the LLCs only to the proceedings in which it is made. In effect what we are proposing is a situation where we are absolutely denying Riffin and his OFA. It’s fair to say that we are already on record on that point, which should make discovery on his potential OFA unnecessary, but we are still willing to stipulate.

You seem to be going back to the Forest City litigation, and also claim that we have had “massive discovery”, but that is certainly not in the STB. See STB decision of November 2, 2015.

As to the 2005 civil rights litigation, that case has been stayed, without discovery. Part of that litigation is the state law claim under NJSA 48:12-125.1, which is also stayed. That’s not before the STB either. Whether or not STB preemption insulates the City, its officials, and others from liability will be litigated outside of the STB proceedings.

You do raise one point that is at least within the realm of the STB. That is whether the City et al have a “legitimate case” and are not “simply some kind of obstreperous unmeritorious roadblock”. If you have a legitimate OFA proposal, you are free to pursue it, but the STB has already ruled that you also have all the discovery you need for that purpose. And, they’re being no other issue subject to discovery, you’re essentially done with discovery. That, among the other reasons stated in our objections, leads us to take the position that no further discovery is called for in these proceedings. And we have objected that if it is sought on behalf of others for their use in other proceedings (Forest City, civil rights, etc.), it’s not appropriate to ask for it here.

We’ve offered a stipulation that addresses more than what you could be entitled to in these proceedings – involving OFAs. So far, you’ve asked for much more, for reasons that you can’t justify. We are not prepared to withdraw our objections, and stand on the responses we’ve provided. Please just tell us whether you want to resolve this by stipulation. Thanks,

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Subject: Re: Stipulation

Date: Friday, September 9, 2016 at 1:25:10 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

Mr. Horgan, your client is famous for contending that the Harsimus Branch was not a line of railroad, and when that effort was exhausted, completely changing directions, admitting that it clearly was a line of railroad and indeed arguing that Conrail's representations to the contrary were fraudulent. Your client also changed lawyers. You now claim that the Hymans have nothing to do with Riffin, and that if you stipulate to that, they are somehow bound. Since all the evidence indicates that the Hymans are up to their eyebrows in dealings with Riffin, and since there is nothing in your stipulation so far which precludes them from switching positions, and/or changing lawyers. You yourself have admitted to me that Hyman took Riffin to see Forest City. They were not there for cupcakes and tea. They were there to pressure Forest City (per the Riffin memos I now have) to force money out of Conrail and the City on the basis of Riffin's OFA. Hyman told Forest City he would compensate Riffin for his work. City et al are perfectly entitled to discovery into the connection, because it is an abuse of the OFA remedy and process per STB decisions. Will you stipulate that the Hyman interests are in fact supporting Riffin's OFA, and that they intend to compensate him if he advances the real estate interests of Mr. and Mrs. Hyman by winning some "settlement" from, inter alia, Conrail and the City? The stipulation should explain that the Hyman interests are supporting the Forest City litigation to that end. That kind of stipulation meshes with the facts and actually might abate need for some of the discovery.

The other aspect of our discovery against the LLCs is directly related to your statement to me that due to a diagnosed medical condition which impairs Mr. Hyman's ability to make business decisions, he is no longer the manager of the LLCs. You made this disclosure to distance the LLCs from Mr. Riffin, but the LLCs have not publicly renounced him as their manager much less as one of their agents. You cannot invoke Mr. Hyman's medical condition as a grounds to excuse his actions with Riffin, and at the same time continue him as the agent of the LLCs. You yourself indicate to me that he is still in charge of strategy and tactics, being upset you say with Mayor Fulop and wanting to pursue the City for civil rights violations (what those are I still do not understand).

As to the LLCs' massive discovery, you know exactly what I mean. You elected to use OPRA against the City as opposed to STB discovery because it is vastly more efficient in extracting reams of documents than STB discovery, and in addition, you get and have gotten attorneys fees if the request is so burdensome (as yours have been) that the City misses the deadline in supplying all the documents, or persuade a Judge to give you a couple more pages of transcript. I have lost count of the number of OPRAs against the City on Harsimus that the LLCs have filed. I imagine a half dozen or more. My recollection is the City sent your clients boxes of documents under OPRA over a decade ago, and your firm sweeps through the City for more at periodic intervals ever since. Given all your OPRA discovery, and the money you have billed the City for it, I should think if you had a case, you could state it to me, civil rights, personal rights, any rights. The City is the party that has had no discovery, except the minuscule bits and pieces at STB, over your continued opposition, making it costly and inefficient. In contrast, what I sent you is easy (you could probably have fully responded by now in the time you have taken fighting not to), and yet you make blanket objections, offering instead to negotiate meaningless

Email #19

stipulations that are contrary to what your clients are actually doing, and which do not address the facts that the discovery is about.

Finally, if you want to negotiate a discovery dispute with me, then do not put threats, as you did yesterday in your email, that if I file a motion to compel, you will seek sanctions and attorneys fees. You have no basis for that, and given the lack of basis, it comes across as a scare tactic, like the SLAPP-type litigation you previously have mounted on behalf of the Hyman interests against me personally, Andrea Ferster personally, and our clients.

Email #19, continued

Subject: Re: Stipulation

Date: Friday, September 9, 2016 at 4:37:37 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

Charles,

I'm not making threats when I point out that unfounded discovery could be subject to sanctions. That's more in the category of a reminder that both the STB and Judge Dring admonished everyone to be judicious in their pleadings. We're trying to work this out. But, if we can't, and feel that the discovery is abusive, then we would have the opportunity to more formally object.

As to the first question just asked: "Will you stipulate that the Hyman interests are in fact supporting Riffin's OFA...?" the answer is **No**, we can't stipulate to that, because its not true. We've also pointed out that it matters not in the STB proceedings if we did support Riffin (we don't). The STB gave him permission to notice an OFA, thereby establishing a basis for his participation. If, surprisingly, he were to file something that had real merit, why should anyone be precluded from supporting a meritorious application? And you're certainly not entitled to discovery on our strategy in such an (unlikely) event if he comes up with something we like.

The second question, asking for the stipulation "that they [the LLCs] intend to compensate him [Riffin] if he advances the real estate interests of Mr. and Mrs. Hyman by winning some "settlement" from, inter alia, Conrail and the City", has the same response: **No**. Also, that seems to be focused on the Forest City matter, and the civil rights case, not the STB proceedings.

We've told you categorically that we will not stipulate anything on Mr. Hyman's personal or medical condition. Period. That's it. **No**.

And, you're not entitled to STB discovery because Jersey City has repeatedly failed to abide by the New Jersey Open Public Records Act ('OPRA'). One has nothing to do with the other as the STB has already recognized in this proceeding. But you are correct in that we have prevailed in court against the City on these issues.

Finally, as to the 'SLAPP-like" suit you refer to, the appellate court in New Jersey has ruled that litigation was not a SLAPP suit. We legitimately raised the question whether you had a conflict of interest between the City and your other clients that could not be waived under New Jersey law. The court's ruling was that no conflict appeared to the court "at that time". The question could arise again if your clients have different positions on Forest City's development, Riffin's potential OFA, and particularly any potential settlement with Conrail and the City. In fact, almost any conflicting position between clients could disqualify you. We remain concerned on this issue, and want you to understand that.

Please let us know what you want to do with your discovery. Are we done here?

Daniel E. Horgan, Esq.
Waters, McPherson, McNeill, PC
dehorgan@lawwmm.com

Email #20

Subject: Re: Stipulation

Date: Friday, September 9, 2016 at 5:20:27 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

Mr. Horgan, you appear to have gone from 60 to zero. Given what you say, you simply wish to stipulate that it is irrelevant what Mr. and Mrs. Hyman do in connection with Riffin. We see it highly relevant as going to whether any Riffin OFA is "meritorius" (I believe that is your word). Far more than the SLAPP-type suits you filed against Andrea, myself, and our clients. You should provide a full response to our discovery rather than ask us to stipulate to things which are not true in order for the LLCs to evade discovery into what is true. And for you to take the position that you will now make no stipulation as to Mr. Hyman's medical condition is a withdrawal of your earlier willingness, though presumably not the fact. Thus, you basically are saying you will now admit facts you were the first to disclose to me as germane to events in the case. While I suppose that is a litigation style, it is not one that results in agreements.

Email #21

Subject: Fw: Stipulation

Date: Friday, September 9, 2016 at 5:30:34 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

errata: "now" in the third line above should be "not."

By the way, any failure to respond to you anywhere should not be construed as conceding a point. The bottomline, which governs this matter, is that the purpose of an OFA, which can be determined by the words and deeds of the Hymans and Riffin, in connection with the Riffin OFA is germane to the STB proceeding, whether the events showing the nature of the Riffin OFA involve STB or USDC for NJ or any other forum that Riffin or Hyman file suit in based on Riffin's OFA or benefits they seek to achieve for the Hyman interests.

Subject: Re: Stipulation

Date: Friday, September 9, 2016 at 7:44:23 PM Eastern Daylight Time

From: Horgan, Daniel

To: C. Montange

The facts are what I have represented to you in an effort to resolve this. They do not bless your requests for discovery as relevant. We will not participate in what we suspect is an improper effort to clog and delay STB proceedings on OFAs that have no merit because the City has no good faith plans for rail service on the LLCs' properties and the City wants to mis-use the OFA process to frustrate abandonment and confiscate the LLC's property. You are not satisfied with our efforts and our offer to give you more than you're entitled to in discovery.

You should ask yourself if you, as a lawyer for the LLCs, could do what you are asking us to do. The answer should be obvious. We cannot offer more than what is proper and we have offered all that is proper, both in response to your discovery and in these discussions. Conversely, you should recognize that you cannot show the relevance or justify what you are asking for from the LLCs.

So, at this point, discovery is concluded.

Good evening.

Sent from my iPhone

Email #23

Subject: Re: Stipulation

Date: Friday, September 9, 2016 at 8:13:38 PM Eastern Daylight Time

From: C. Montange

To: Horgan, Daniel

I have asked myself the question of what I would do as attorney for the LLCs. First, I would never have gotten them into this situation in the first place. This was obviously a line of railroad subject to STB jurisdiction. It looks to me like they breached NJ Title Standards when they purported to buy it. They were the only ones even to make an offer as I understand it. They took risks I would have counseled against. Second, once in the situation, I would have settled the case, because I would have evaluated it a loser for them. It follows, third, that I would try to settle the case now by accepting reasonable compensation and enjoying life. But I already told you that. As to discovery, I would not represent a client doing what yours is doing, and then deny it or deny its relevancy and obstinately refuse discovery. Under the ethical rules, attorneys for parties are supposed to cooperate on discovery, not try to create costly barriers like you or self-represented Riffin.

Please stop insinuating that we are clogging or delaying STB proceedings. Your client embarked on an eight year effort to evade STB jurisdiction with various claims that the H Branch was not a line, and you continued to battle against STB jurisdiction even after you admitted it by stipulation. Your firm and your client sued me personally and my clients and Andrea in a SLAPP type suit. Your client is on record with threats against anyone he views as an opponent. Your side has tried to evade STB jurisdiction and drive those seeking compliance with the law into submission. Between us, at least, please stop your posing. It makes me think any discussion with you is pointless. Now the Hyman interests are apparently and by your own admission working with Riffin.

Have a fantastic weekend.

Subject: AB 167-1189X, discovery dispute

Date: Thursday, September 15, 2016 at 6:08:20 PM Eastern Daylight Time

From: C. Montange

To: Robert Jenkins, Horgan, Daniel, Eric Strohmeyer, Jim Riffin

Courtesy email.

Email #25

CHARLES H. MONTANGE

ATTORNEY AT LAW

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15 Sept. 2016

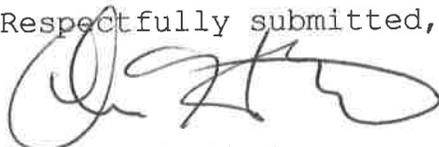
Hon. John P. Dring, Administrative Law Judge
Federal Energy Regulatory Commission
Office of Administrative Law Judges
888 First Street, N.E.
Washington, DC 20426

Re: Conrail - Ab. Exemption - Hudson County, NJ, STB dkt
AB 167-1189X and related cases.

Dear Judge Dring:

Per the order of the Surface Transportation Board (STB) in the above docket, served July 5, 2016, enclosed on behalf of City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively "City et al"), please find a motion for sanctions against Mr. Riffin and a motion to compel against 212 Marin Boulevard, LLC, et al ("LLCs"). Both motions relate to the continued efforts of City et al commencing last March to obtain meaningful discovery against Mr. Riffin and subsequently the LLCs in respect to matters relevant to this proceeding.

Respectfully submitted,



Charles H. Montange
Counsel for City et al.

cc. Parties per cert. of service

Email #25, first attachment

Before the Surface Transportation Board

Conrail Abandonment)
)
) AB 167 (Sub-no. 1189X)
--in Hudson County, NJ.
)
) and
CSX Transp. - Discon. of)
Service - same AB 55 (Sub-no. 686X)
)
) and
Norfolk Southern -)
Discon. of Service same) AB 290 (Sub-no. 306X)

Motion on Behalf of City of Jersey City et al
for Sanctions Against James Riffin
for Failure to Respond to Discovery (Document) Requests

City of Jersey City, Rails to Trails Conservancy, and
Pennsylvania Railroad Harsimus Stem Embankment Preservation
Coalition ("City et al") hereby move, pursuant to 49 C.F.R.
1114.31(b), for discovery sanctions, and in particular, for an
order either (1) dismissing James Riffin from further
participation in this proceeding, or, in the alternative, (2)
barring James Riffin from submitting an "offer of financial
assistance" ("OFA") pursuant to 49 U.S.C. 10904 in this
proceeding, and (3) for attorneys' fees and costs associated
with the motions to compel Riffin, hearings, and motion for
sanctions, and any further hearings attendant thereto.

Summary. On August 25, in response to the order served by
Administrative Law Judge Dring on the same date in this

Email #25, second attachment, excerpted

Subject: FW: Discovery Motion to Compel LLCs - Request for prior discovery
Date: Monday, September 19, 2016 at 4:51:41 PM Eastern Daylight Time
From: Horgan, Daniel
To: c.montange@frontier.com

From: "Daniel E. Horgan" <dehorgan@lawwmm.com>
Date: Monday, September 19, 2016 at 4:32 PM
To: "Charles H. Montagne" <c.montagne@frontier.com>
Cc: Eric Strohmeier <esstrohmeier@yahoo.com>, "cnjrail@yahoo.com" <cnjrail@yahoo.com>, James Riffin <jimriffin@yahoo.com>, Robert Jenkins <Rmjenkins@mayerbrown.com>, Adam Sloane <ASloane@mayerbrown.com>
Subject: Discovery Motion to Compel LLCs - Request for prior discovery

Dear Mr. Montagne,

Today, September 19, 2016, we received the service copy of your motion to compel discovery from the LLCs. Exhibit F to that motion describes the supporting materials provided at Exhibit F as having been "forwarded by CNJ Rail pursuant to discovery..."

In the past we have called your attention to the STB rule on discovery requests that requires service of both discovery requests and responses upon other counsel. See: 49 CFR 1114.21(f) Since we have no record of receiving your request to CNJ Rail for anything like these materials, nor any response from CNJ Rail, we now request that you provide us with the formal discovery requests made to CNJ Rail, and all responses, objections, and documents or other information produced by CNJ Rail, including anything that you maintain was "forwarded" to you by CNJ Rail as part of an ongoing obligation to comply with your discovery requests.

Exhibit F acknowledges your interaction with CNJ Rail and now demonstrates that interaction has already provided you with materials that you have been seeking from Riffin and from the LLCs. We are entitled to know what you received before we are required to respond to your motion. Therefore, time is of the essence and we request an immediate response. Please provide us with your requests, what you received, and when you received each item, as the Rules require you to have done previously, and certainly before embarking upon your current round of discovery requests. Thank you,.

Daniel E. Horgan, Esq.

Waters, McPherson, McNeill, PC

dehorgan@lawwmm.com

300 Lighting Way, 7th Floor

Secaucus, NJ 07094

Direct phone: 201-926-4402

Direct fax: 201-863-7153

Cell: 201-926-4402

Subject: Re: Discovery Motion to Compel LLCs - Request for prior discovery
Date: Tuesday, September 20, 2016 at 4:53:03 PM Eastern Daylight Time
From: C. Montange
To: Horgan, Daniel
CC: Eric Strohmeyer

Mr. Horgan, again you surprise me. You may ask CNJ for discovery, as did City et al. You have known we had an outstanding request there, for some time, I think. You can always ask too. But beyond that, I have never seen the construction you place on discovery rules. Generally speaking, if an attorney for a party develops work product, that it protected from discovery, much less any obligation to turn it over to every other party in a proceeding. Goodness, you are refusing to provide any discovery information to my client, even if not protected by any privilege. Yet you claim free rider privileges on anything information City et al develop on the basis of discovery from others, and the irony is that you resist providing any information at all. Your construction of duty to provide discovery to one party to all parties is not what I have ever seen in STB proceedings, including this case. Please send me some legal authority for your demands. I am aware of none.

If Mr. Strohmeyer wishes to send you what he has sent me, that is between him and you, absent a legitimate discovery request by you to him, if you still have not done so. But candidly it appears to me that the LLCs already have whatever CNJ might have, in that it is contained in Mr. Riffin's emails to your client, and those from your client to him. You can check your own files without burdening City et al. for those that may also have reached CNJ. City et al of course in our discovery has requested that the LLCs compile their emails to and from Riffin, and any other messages to and from him, and supply same to us, for do not know if CNJ received all, and we further have no way to know if CNJ has forwarded to us anything close to what Riffin and your client exchanged, even if CNJ had access. Please respond to the discovery City et al has tendered to the LLCs.

Exhibit D

to

Reply to City et al.'s Motion to Compel Discovery from
LLC Intervenors
(Interrogatories, Document Demands, and Requests for Admissions)

And

Cross-Motion for Sanctions Pursuant to 49 C.F.R. § 1114.21(c)

By the LLC Intervenors

In

STB Docket No. AB-167 (Sub-No. 1189X)
CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
HUDSON COUNTY, NJ

STB Docket No. AB-55 (Sub-No. 686X)
CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No.306X)
NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

**Affidavit of Eric Strohmeyer, dated September 7, 2016, filed in
Riffin v. Forest City Ratner Cos. et al., United States District
Court for the District of New Jersey, docket number 2:16-cv-
04433-ES-JAD (filed September 13, 2016)**

SEPTEMBER 7th, 2016

AFFIDAVIT OF ERIC S. STROHMEYER

1. My name is Eric S. Strohmeyer. I am over the age of 21. I am competent and authorized to make this Affidavit.
2. I am the Chief Operating Officer (“COO”) of CNJ Rail Corporation (“CNJ Rail”), a New Jersey corporation currently headquartered in Watchung, NJ. As such, I can speak for, and on behalf of, CNJ Rail.
3. On March 27, 2009, CNJ Rail filed a Notice of Intent to file an Offer of Financial Assistance (“OFA”) in: *Consolidated Rail Corporation – Abandonment Exemption – In Hudson County, NJ*, STB Docket No. AB 167 (Sub-No. 1189) X. The aforementioned proceeding is currently being adjudicated before the US Surface Transportation Board (“STB”).
4. The purpose in filing the Notice was to ensure that the portion of the rail corridor that lies between CP Waldo, and the West Side of the Hudson Bergen Light Rail Line, would be preserved for continued freight rail service.
5. To date, two other parties have also filed Notices with the STB regarding this same segment of rail line. Those other parties are: The City of Jersey City (back in 2009), and Mr. James Riffin (more recently in 2015).
6. As of the date of the execution of this Affidavit, CNJ Rail fully expects the City of Jersey City to file an OFA with the Board. CNJ has been told by Mr. Riffin that he too intends to file a competing OFA with the Board. With two OFA’s likely to be already before the Board, CNJ Rail will not file an additional competing OFA for the line.
7. I respectfully ask the Court to note that CNJ Rail is strongly supporting the anticipated OFA which will be filed by the City of Jersey City. CNJ has been quite vocal in its support for the City’s efforts. CNJ believes the City’s pending OFA is fully consistent with not only the “letter of the law”, but also with the “spirit of the law” as well.
6. CNJ Rail anticipates that it will only file an OFA in the event that no other entity (including the City and Mr. Riffin) files an OFA with the Board. Since the City of Jersey City has already passed an ordinance expressly authorizing City personnel to take steps to facilitate such a filing, CNJ would be stunned if the City did not follow through with its anticipated OFA.
7. In the unlikely event that CNJ Rail does file its own OFA, CNJ Rail’s Offer of Financial Assistance will be limited to whatever portion(s) of the line that lies between CP Waldo and an appropriate point west of the Hudson Bergen Light Rail Line. The end point for such a hypothetical OFA would be developed in conjunction with objectives and desires of the City.

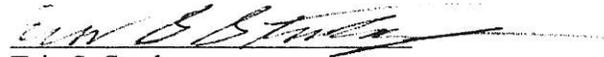
8. On behalf of CNJ and others, I will close this affidavit with a request that the Court be mindful of any possible adverse consequences which may negatively impact the City of Jersey City as a result of actions taken by this Court in this proceeding.

9. The City of Jersey City has spent nearly a decade litigating Conrail's illegal abandonment of the Harsimus Line. Millions of taxpayer dollars have been spent in order to preserve this important rail corridor for future use. The City has been actively pursuing meaningful relief from Conrail's nefarious and illegal actions for nearly a decade. I implore this Court to be mindful of how its decisions may impact the innocent parties in Jersey City.

DECLARATION

I, Eric S. Strohmeyer, do hereby declare that the above Affidavit has been made under the penalty of perjury. In the event that any of the representations made herein above are found to be false or misleading, I acknowledge that I may be subject to punishment.

Respectfully submitted,



Eric S. Strohmeyer
Vice President, COO

CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069
Tel: (908) 361 - 2435

Executed on: September 7th, 2016