

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

Finance Docket No. 34997

Finance Docket No. 35245

231028

231029

**PETITIONS OF JAMES RIFFIN
TO REOPEN**

**REPLY OF THE MARYLAND TRANSIT ADMINISTRATION,
AND
COUNTY OF ALLEGANY, MARYLAND
TO PETITIONS TO REOPEN**

Communications with respect to this document should be addressed to:

ENTERED
Office of Proceedings

OCT 3 2011

Part of
Public Record

William M. Rudd
County Attorney for Allegany County
701 Kelly Road
Cumberland, MD 21502-2803
(301) 777-5823
Email: brudd@allconet.org

Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600
Email: cspitulnik@kaplankirsch.com
cpilsk@kaplankirsch.com
afultz@kaplankirsch.com

County Attorney
County of Allegany, Maryland

Counsel for the Maryland Transit
Administration and Allegany County, MD

Dated: October 3, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

**Finance Docket No. 34997
Finance Docket No. 35245**

**PETITIONS OF JAMES RIFFIN
TO REOPEN**

**REPLY OF THE MARYLAND TRANSIT ADMINISTRATION,
AND
COUNTY OF ALLEGANY, MARYLAND
TO PETITIONS TO REOPEN**

In his "Consolidated Petitions to Reopen" this Board's decisions in Finance Docket Numbers 34997 and 35245, Mr. James Riffin seeks to revive his previously rejected attempts to have himself declared a rail carrier on a segment of the former CSX Georges Creek Branch (the "Allegheny Line"). Mr. Riffin's arguments have been repeatedly rejected by this Board and the U.S. Court of Appeals for the District of Columbia Circuit, and he presents no valid reason to reconsider those decisions again.

A petition to reopen an administratively closed proceeding before this Board must set forth in detail material error, new evidence or substantially changed circumstances with respect to the proceeding the petitioner seeks to reopen. 49 C.F.R. § 1115.4. In deciding whether to accept a petition to reopen pursuant to 49 C.F.R. § 1115.4, the Board must "weigh the magnitude of the alleged bases for reopening this case against countervailing equitable concerns regarding administrative finality and repose and detrimental reliance by the applicant and the public."

Tongue River Railroad Company, Inc. —Construction and Operation—Western Alignment,

Docket No. FD 30186 (Sub-No. 3), slip op. at 2 (Service Date June 15, 2011). It is clear Mr. Riffin cannot meet this standard.

The basis for Mr. Riffin's petitions is a February 16, 2011 decision by the United States Bankruptcy Court for the District of Maryland that approved the sale of Mr. Riffin's equitable interest in the Allegany Line. Mr. Riffin argues that that decision proves that Mr. Riffin *did* have an interest in the line dating from August 2006, and that such an interest should have led the Board to find that Mr. Riffin was a carrier on the Allegany Line in its earlier decisions.

The fundamental absurdity of Mr. Riffin's Petitions is immediately apparent. The Bankruptcy Court authorized the *sale* of all of Mr. Riffin's interest in the Line, including his equitable interest and any associated common carrier rights and obligations, to Eighteen Thirty Group. *In re: James Riffin*, Case No. 10-11248-DK *Order Granting Motion of Chapter 7 Trustee* (Doc. 218) Slip Op. at 2 (D. Md. Bankr., Feb. 17, 2011). That sale has now been consummated. *In re: James Riffin*, Case No. 10-11248-DK, *Report of Sale of Property to Eighteen Thirty Group LLC* (Doc. 237) (D. Md. Bankr., Mar. 17, 2011). Eighteen Thirty Group LLC has obtained Board authority to acquire the Line. *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County, MD*, Docket No. AB 55 (Sub-No. 659X) (Service Date Dec. 30, 2010) (“*Eighteen Thirty OFA Decision*”) (accepting offer of financial assistance of Eighteen Thirty Group to acquire the Allegany Line). Accordingly, as of today, any legal or equitable interest Mr. Riffin may have had has now been conveyed and Eighteen Thirty Group has obtained the authority to operate on the Line. Reopening two proceedings focused on Mr. Riffin's personal status regarding the Allegany Line would serve no purpose because Mr. Riffin has no interest in the Line under any conceivable theory.

That factual context underscores that Mr. Riffin's Petitions must be denied under the Board's standard for reopening closed proceedings. First, the Board's interest in the finality of its earlier decisions is particularly strong. After years of litigation, including multiple appeals to the U.S. Court of Appeals for the District of Columbia Circuit, the Board has resolved and rejected Mr. Riffin's claims regarding the Allegany Line. *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 34497 (Service Date July 13, 2011) (“*FD 34997 Final Decision*”); *James Riffin v. STB*, Order, D.C. Cir. Case No. 09-1277 (Nov. 30, 2010) (per curiam) (affirming Board's Decision in Finance Docket No. 35245 that Riffin is not a rail carrier on the Allegany Line). Based in part on those decisions, see *Transcript* at 15-17, Eighteen Thirty Group has sought and obtained Board approval to acquire the Line and operate as a rail carrier on the Allegany Line. *Eighteen Thirty OFA Decision* at 2 (granting petition of Eighteen Thirty Group to acquire the Allegany Line). Mr. Riffin participated in that proceeding.

These Petitions to Reopen are a collateral attack on that decision, without notice to the participants in that proceeding. If, despite the utter lack of merit to his arguments, Mr. Riffin were to succeed here, he would no doubt argue that the rights of Eighteen Thirty Group were somehow subordinate to his alleged rights and would ask the Board to unwind that transaction and install himself as owner of the Line. The Board (as well as the Bankruptcy Court) has already decided those issues, however, after patient consideration of every argument Mr. Riffin has raised, and third-parties have acted in reliance on those decisions. Accordingly, there is a strong interest in preserving the finality of those decisions.

Balanced against that strong interest in preserving the finality of the Board's prior decisions, Mr. Riffin has not raised any new facts or information of a magnitude that would justify entertaining a petition to reopen. All of the facts surrounding the ownership of the

Allegany Line have been known or were readily discoverable since at least 2006, when the events giving rise to Mr. Riffin's claims occurred. Indeed, Mr. Riffin has raised his equitable interest argument before, in the context of his appeal of FD 35245 to the D.C. Circuit. The Bankruptcy Court merely considered those facts to determine what assets were in the Bankruptcy Estate; it did not break new factual or legal ground. As this Board has repeatedly admonished Mr. Riffin, he could have sought a judicial declaration of his property rights at any time. Mr. Riffin refused to do so, preferring instead to pursue his quixotic quest before the Board. Having sat on whatever rights Mr. Riffin may have had for years, he cannot now assert those claims as a basis to unwind years of Board decisionmaking. Accordingly, Mr. Riffin has not raised new facts that would justify reopening the Board's prior decisions. *See Burlington Northern Railroad Company—Abandonment Exemption— In Skagit County, WA*, STB Docket No. AB-6 (Sub-No. 299X), slip op. at 3 (Service Date Sept. 30, 1997) (denying petition to reopen a prior decision based on facts that existed at the time of the decision).

Moreover, even if the Board were inclined to examine the merits of Mr. Riffin's theory, it is clear his argument lacks merit. The Board's earlier decisions did not depend on, or presume, that Mr. Riffin had no equitable interest in the Allegany Line; the key was that he did not have a legal or possessory interest that would allow him to actually use and operate the Line. *FD 34997 Final Decision*, at 2; *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 35245, slip op. at 2-3 (Service Date Sept. 15, 2009). The Bankruptcy Court itself understood that Mr. Riffin's equitable interest in the property was not inconsistent with the Board's decisions:

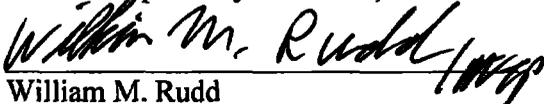
What the board found was, and it was affirmed, that Mr. Riffin was not authorized at the time he applied for that label, to operate the Allegany Railroad line and therefore he couldn't be found to be a common carrier, finding that he did not have title to the line. He had not been

given legal title to the line. But that is not inconsistent with what rights he held for equitable title and which Mr. Riffin had long argued and I think with some correctness he held such equitable rights.
Transcript at 16, Lns 17-24.

Indeed, the Bankruptcy Court accepted this Board's prior determinations that Mr. Riffin was not a rail carrier. *In re: James Riffin*, Case No. 10-11248-DK, *Transcript of Judge's Oral Ruling in Hearing Held on February 16, 2011* (Doc. 230) ("*Transcript*") at 20, Lns. 1-2(D. Md. Bankr., Feb. 16, 2011). Thus, the Bankruptcy Court's decision was entirely consistent with the Board's prior decisions. If it proves anything, the Bankruptcy Court's decision proves that even if the Board had had before it a finding that Mr. Riffin had an equitable interest in the Line, the Board would have reached the same conclusion regarding Mr. Riffin's status as a non-carrier. Accordingly, Mr. Riffin has presented no reason for the Board to reopen its decisions in Finance Docket Numbers 34997 and 35245.

WHEREFORE, and in view of the foregoing, MTA and the County respectfully request this Board to expeditiously deny the Petitions to Reopen.

Respectfully submitted,



William M. Rudd
County Attorney for Allegany County
701 Kelly Road
Cumberland, MD 21502-2803
(301) 777-5823
Email: brudd@allconet.org

County Attorney
County of Allegany, Maryland



Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600
Email: cspitulnik@kaplankirsch.com
epilsk@kaplankirsch.com
afultz@kaplankirsch.com

Counsel for the Maryland Transit
Administration and Allegany County, MD

Dated: October 3, 2011

Certificate of Service

I hereby certify that I have this 3d day of October, 2011, caused to be served a copy of the foregoing Reply of the Maryland Transit Administration and the County of Allegany, Maryland, to Pctitions to Reopen, upon the following parties of record:

James Riffin
1941 Greenspring Drive
Timonium, MD 21093



W. Eric Pilsk