

234719

LAW OFFICE  
**THOMAS F. MCFARLAND, P.C.**  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

THOMAS F. MCFARLAND

August 26, 2013

By UPS overnight mail

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

**FEE RECEIVED**  
AUG 27 2013  
SURFACE  
TRANSPORTATION BOARD

*NOR 42138*

Re: ~~Finance Docket No. 35763~~, *Horry County, South Carolina, et al. v. Baltimore and Annapolis Railroad Company, d.b.a. Carolina Southern Railroad Company*

Dear Ms. Brown:

Hereby transmitted is the original and 10 copies of a Formal Complaint for filing with the Board in the above referenced matter.

Also enclosed is a check in the amount of \$350 for the filing fee.

Very truly yours,

*Tom McFarland*

Thomas F. McFarland  
*Attorney for Complainants*

*TMcF:kl:enc:\1608\ltrSTB1*

ENTERED  
Office of Proceedings  
AUG 27 2013  
Part of  
Public Record

**FILED**  
AUG 27 2013  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35763

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NOR 42138

HORRY COUNTY, SOUTH CAROLINA,  
MARION COUNTY, SOUTH CAROLINA,  
COLUMBUS COUNTY, NORTH CAROLINA,  
CITY OF CONWAY, SOUTH CAROLINA,  
TOWN OF FAIR BLUFF, NORTH CAROLINA,  
TOWN OF CHADBOURN, NORTH CAROLINA,  
TOWN OF TABOR CITY, NORTH CAROLINA  
CITY OF WHITEVILLE, NORTH CAROLINA,

**FORMAL COMPLAINT**

and

METGLASS, INC.

Complainants,

v.

THE BALTIMORE AND ANNAPOLIS RAILROAD COMPANY,  
d.b.a. CAROLINA SOUTHERN RAILROAD COMPANY,

Defendant.

HORRY COUNTY, SOUTH CAROLINA  
1301 Second Avenue  
Conway, SC 29526

MARION COUNTY, SOUTH CAROLINA  
1305 Main Street  
Marion, SC 29571

COLUMBUS COUNTY, NORTH CAROLINA  
111 Washington Street  
Whiteville, NC 28472

CITY OF CONWAY, SOUTH CAROLINA  
225 Main Street  
Conway, SC 29526

TOWN OF FAIR BLUFF, NORTH CAROLINA  
P.O. Box 157  
Fair Bluff, NC 28439

TOWN OF CHADBOURN, NORTH CAROLINA  
602 N. Brown Street  
Chadbourn, NC 28431

TOWN OF TABOR CITY, NORTH CAROLINA  
P.O. Box 655  
301 Fifth Street  
Tabor City, NC 28463

CITY OF WHITEVILLE, NORTH CAROLINA  
317 S. Madison Street  
P.O. Box 607  
Whiteville, NC 28472

METGLASS, INC.  
440 Allied Drive  
Conway, SC 29526

Complainants

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 (fax)  
mcfarland@aol.com

Attorney for Complainants

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Defendant.

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SURFACE  
TRANSPORTATION BOARD

**FORMAL COMPLAINT**

Pursuant to 49 U.S.C. § 11701(b) and 49 C.F.R. § 1111.1, *et seq.*, HORRY COUNTY, SOUTH CAROLINA, MARION COUNTY, SOUTH CAROLINA, COLUMBUS COUNTY, NORTH CAROLINA, CITY OF CONWAY, SOUTH CAROLINA, TOWN OF FAIR BLUFF, NORTH CAROLINA, TOWN OF CHADBOURN, NORTH CAROLINA, TOWN OF TABOR CITY, NORTH CAROLINA, CITY OF WHITEVILLE, NORTH CAROLINA, and METGLASS, INC., referred to collectively as Complainants, hereby formally complain against THE BALTIMORE AND ANNAPOLIS RAILROAD COMPANY, d.b.a. CAROLINA SOUTHERN RAILROAD COMPANY (CALA) as follows:

**1**

HORRY COUNTY is a political and geographic subdivision of the State of South Carolina. A segment of CALA's rail line between the South Carolina-North Carolina border and Conway, South Carolina is located in Horry County.

**2**

MARION COUNTY is a political and geographic subdivision of the State of South Carolina. A segment of CALA's rail line between Mullins, SC and the South Carolina-North Carolina border is located in Marion County.

**3**

COLUMBUS COUNTY is a political and geographic subdivision of the State of North Carolina. Segments of CALA's rail line between the South Carolina-North Carolina border and Whiteville, NC, and between Chadbourn, NC and the South Carolina-North Carolina border, are located in Columbus County.

**4**

THE CITY OF CONWAY is a municipality in Horry County, South Carolina. CALA's rail line extends through Conway.

**5**

THE CITY OF WHITEVILLE is a municipality in Columbus County, North Carolina. CALA's rail line extends through Whiteville.

**6**

THE TOWN OF FAIR BLUFF is a municipality in Columbus County, North Carolina. CALA's rail line extends through Fair Bluff.

**7**

THE TOWN OF CHADBOURN is a municipality in Columbus County, North Carolina. CALA's rail line extends through Chadbourn.

**8**

THE TOWN OF TABOR CITY is a municipality in Columbus County, North Carolina. CALA's rail line extends through Tabor City.

**9**

METGLASS, INC. is a distributor of transformer electric steel, brazing alloys, magnetic alloys, and pulse cores. Metglass's place of business is at Conway, SC. Metglass was a substantial user of CALA's rail service before CALA discontinued providing that service. Metglass's freight transportation costs have increased by \$100,000 to \$300,000 per year as a result of the need to use alternative means of transportation because of the embargo of rail service. Metglass would use the rail line if service were to be restored.

**10**

CALA is a common carrier by rail in interstate commerce subject to the jurisdiction of the Surface Transportation Board (STB). CALA operates a rail line approximately 76 miles in length between point of connection with CSX Transportation, Inc. at Mullins, SC and Whiteville, NC, and between a point of connection with Waccamaw Coastline Railroad Company at Conway, SC, and Chadbourn, NC.

**11**

The STB has jurisdiction of the complaint by virtue of 49 U.S.C. § 11701(b) and 49 U.S.C. § 11704(c)(1).

**12**

Complainants have standing to file this Complaint by virtue of 49 U.S.C. § 11701(b).

**13**

On May 24, 2011, representatives of the Federal Railroad Administration (FRA) inspected bridges on CALA's rail line and stated that seven bridges had critical defects. On May 26, 2011, CALA voluntarily ceased rail operations while it performed repairs on the bridges at issue. CALA resumed rail operations on August 8, 2011 at the conclusion of those repairs.

**14**

On August 24, 2011, FRA representatives conducted another inspection and stated that bridges on CALA's rail line continued to be defective. As a result of that inspection, the FRA recommended that CALA cease rail operations until the defective bridges were adequately repaired. CALA ceased rail operations again on August 24, 2011. To date, CALA has not made such repairs, and has not resumed rail operations.

**15**

According to CALA, it has completed repairs on some of the defective bridges. CALA has estimated that the repairs needed for the remaining defective bridges would cost approximately \$1.5 to \$2 million. CALA's engineering consultant has estimated that it would take six to eight weeks to complete repair of the defective bridges. CALA has alleged that it does not have sufficient funds to make the required repairs to the defective bridges.

**16**

In 2011, and again in 2012, CALA applied under the TIGER program for federal grant funds sufficient to repair the remaining defective bridges. CALA also applied for funds under the Railroad Rehabilitation and Improvement Financing Program. All of those funding applications were denied.

**17**

Effective August 27, 2012, CALA issued its Embargo No. CALA000112 suspending service over its rail lines. That embargo remains in effect as of the filing of this Complaint a year after it was first issued. CALA has performed virtually no ongoing track maintenance during the two-year period that its rail lines have been out of service.

**18**

In September, 2012, officials of the complainant Counties formed an ad hoc committee known as the Interstate Railroad Committee of North and South Carolina (the Committee) to facilitate communication regarding means to restore rail service on CALA's rail lines. At a meeting of that committee at Loris, SC on October 8, 2012, Mr. Ken Pippin, President of CALA, stated that despite denial of all prior applications for funding for bridge repair, CALA will continue to seek governmental funding for that purpose.

**19**

Despite a number of meetings between the Committee and CALA over a period of approximately six months, no progress was made in CALA's securing funding for bridge repair, and the embargo remained in effect. The Committee thus concluded that CALA was not going to be able to obtain governmental funding for bridge repair. Accordingly, the Committee requested that CALA restore rail service over its lines by means of private funding of bridge repair, or sell the rail lines for continued rail operation, or take other lawful action to remove the embargo. No such funding has been obtained. No such sale agreement has been reached. No such other action has been taken. The embargo remains in effect a full year after it was first imposed.

**20**

The absence of rail service during the past two years has had a substantial adverse effect on the Complainants. The Counties and Municipalities have been unable to attract industries considering location of new facilities or expansion of existing facilities because those industries require rail service that is not being provided by CALA. Georgia Pacific will not reopen its facility on the rail line unless rail service is restored. That has deprived the local area of more than 400 jobs. Complainant Metglass has experienced substantially increased freight charges. Martin Marietta Company has gone out of business at its location on the rail line because of the absence of rail service.

**21**

As manifested by its behavior over the past two years, CALA's intent is to keep its embargo in place indefinitely in order to increase its bargaining power in conjunction with a potential future sale of its rail lines. CALA President Ken Pippin has stated that while the embargo continues, CALA can hold out indefinitely because a non-running railroad does not cost him much, and CALA continues to derive income from easement agreements.

**22**

Prior to CALA's cessation of rail service in 2011, CALA served approximately 20 shippers and receivers of freight. Prior to the economic recession, CALA transported approximately 13,000 carloads per year. Even in recession year 2008, CALA transported more than 7,000 carloads.



## **VIOLATION OF THE LAW AND REQUESTED RELIEF**

Within a reasonable time after issuance of the embargo, CALA was legally required to either (1) repair the defective bridges and restore rail service; or (2) sell its rail lines for continued rail operation; or (3) file an application or petition for exemption for abandonment of its rail lines. A reasonable time for such action has passed. Despite the lengthy passage of time since issuance of its embargo, CALA has not exercised any of those options. The law does not permit CALA to keep the embargo in place indefinitely, as it is doing. CALA's embargo has become an unlawful abandonment.

By reason of the foregoing facts and circumstances, CALA has failed and refused to provide rail transportation on reasonable request in violation of 49 U.S.C. § 11101(a), and is continuing to do so. In addition, CALA has unlawfully abandoned its rail lines in violation of 49 U.S.C. § 10903(d).

WHEREFORE, for the reasons stated, after due investigation the Board should order that CALA cease and desist from such violations by an early date certain, and refrain from such violations in the future.

Respectfully submitted,

HORRY COUNTY, SOUTH CAROLINA  
1301 Second Avenue  
Conway, SC 29526

COLUMBUS COUNTY, NORTH CAROLINA  
111 Washington Street  
Whiteville, NC 28472

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P.O. Box 157  
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P.O. Box 655  
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METGLASS, INC.  
440 Allied Drive  
Conway, SC 29526

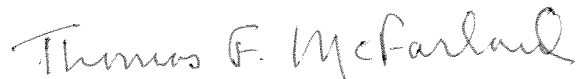
MARION COUNTY, SOUTH CAROLINA  
1305 Main Street  
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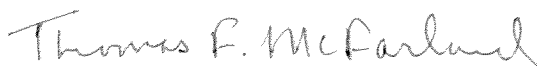
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(312) 201-9695 (fax)  
mcfarland@aol.com

Attorney for Complainants

Date Filed: August 27, 2013

**CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. § 1111.3, this is to certify that a true copy of this Formal Complaint was served on Mr. Kenneth Pippin, President of Defendant, (in the absence of a Chief Legal Officer for Defendant), by overnight mail addressed to Mr. Pippin at Carolina Southern Railroad Company, 171 Highway 905, Conway, SC 29526.



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Thomas F. McFarland