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Office of Proceedings
May 2, 2016
Part of
Public Record

Before the Surface Transportation Board

Conrail -- Abandonment --in Hudson County, NJ.	AB 167 (Sub-no. 1189X)
	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

to Compel James Riffin

to Respond to Discovery (Document) Requests

and for Sanctions

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. 1114.21, 1114.30, and 1114.31, for an order directing James Riffin to respond fully and completely to document requests tendered on behalf of City et al. Mr. Riffin is in default in response, and should be compelled and/or sanctioned.

A copy of the document requests (served on 28 March 2016 by email and express mail) is set forth in Exhibit A, attached hereto. That request called for a response by April 19, 2016.

By a memo dated March 30, 2016, Mr. Riffin effectively acknowledged receipt and stated that he would formally respond on April 19. See Riffin Memo dated March 30, 2016, Exhibit B.[1]

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[1] Riffin's March 30 memorandum alludes to a "settlement proposal" set forth in paragraph 73 of a pro se "petition for writ of certiorari" filed by Riffin from an order of the Third Circuit holding that it was not proper venue for Riffin (a resident in the Fourth Circuit) to challenge STB orders in Norfolk Southern Railway - Ac. Op. Ex. - Delaware and Hudson Railway, F.D. 35873. [According to the Supreme Court website, the pro se petition has been docketed as Sup. Ct. No. 15-1229 (March 30, 2016).] Riffin evidently is alluding to his pro se petition, at paragraphs 69 to 73 (pp. 14-16), where he explains how he hopes to rely on Mr. Hyman to finance Mr. Riffin's use of the OFA mechanism and on Mr. Hyman to force Conrail to deal with Riffin due to Conrail's obligations to Mr. Hyman for misrepresenting that the Harsimus Branch was an unregulated spur as opposed to a line subject to STB abandonment regulation. Mr. Riffin hopes the problem caused Hyman and Conrail by the City's OFA will force Conrail to sell 12 acres in the Palisades to Mr. Hyman as well, and net Mr. Riffin various benefits as compensation for facilitating the denouement and flummoxing the City. Mr. Riffin also evidently elaborated elements of this scheme in a "confidential" portion of a pro se pleading he filed in the Third Circuit proceeding (Riffin v. STB, 3d Cir. Nol. 15-2701, included in his pro se cert petition at pp. 77-78 (excerpts in Exhibit D). Riffin informed the Third Circuit (which evidently declined to keep the pleading confidential) that he anticipated making an OFA for the Harsimus Branch in AB 167-1189X "backed with Mr. Hyman's considerable assets." See pro se cert petition, p. 78 para 13. While Mr. Riffin states many things in his pro se petition (or quotes himself making statements elsewhere) concerning AB 167-1189X that are misleading or false, or both, City et al has no reason to doubt his representations to the Courts that he is relying on Mr. Hyman to finance his OFA.

Based on what he has placed in his pro se cert petition, Mr. Riffin appears in breach of the protective order entered in AB 167-1189X in that he has publicly disclosed, and used in other proceedings, information supplied by Conrail and/or CNJ Railroad designated for confidential treatment ion AB 167-1189X. City et al reserve their rights in connection with this breach. In the excerpts attached as Exhibit D, City et al has deleted

Unfortunately, Mr. Riffin failed to respond. Counsel for the City sent him email reminders on April 20 and 26, ultimately threatening a motion to compel and for sanctions. Mr. Riffin stated on April 28 that he had forgotten and "hoped" to email his response on April 29. See emails annexed as Exhibit C. As of the submission of this motion to compel, Riffin has made no response. He is in default.

Over the objection of Conrail and City et al, and in contravention of its precedent, this Board has allowed Riffin to participate in the OFA portion of this proceeding notwithstanding Riffin's failure by years to comply with the applicable statutory deadline for filing an OFA, as well as Riffin's failure by years to comply with the applicable regulatory deadline for notices of intent to file an OFA. Riffin should at least be required to comply with discovery rules, which he is now defaulting. Moreover, counsel for City et al will be out of the country from May 3 to 27, and no longer has time for Mr. Riffin's cat and mouse gamesmanship. City et al accordingly move that he be compelled to respond fully to the discovery sought by City et al without objection immediately, or that, as a sanction against his "forgetfulness" in responding to

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information which City et al understands to be covered by the protective order.

discovery, that he be barred from further participation in the OFA portion of this proceeding.

The document requests of City et al basically fall into two categories: (1) communications between Riffin and 212 Marin Boulevard LLC, et al (Mr. Hyman) and/or Conrail, and (2) documents relating to Riffin's financial responsibility to make an OFA, including his bankruptcy as discussed by STB in F.D. 35873, decision served March 24, 2016, p. 2 n.2.
All this information is germane to a number of issues in this case, including but not limited to Mr. Riffin's financial responsibility to participate in the OFA process at all; efforts by the LLCs and/or Conrail to evade the OFA process; coordination between Riffin, the LLCs and/or Conrail to evade and continue to evade STB jurisdiction, abuse the agency's processes, deprive the public of meaningful comment under section 106 of the National Historic Preservation Act, and engage in anticipatory demolition of section 106-protected assets embodied in the Harsimus Branch (i.e., remove the Harsimus Embankment from this Board's jurisdiction and destroy it) in violation of section 110(k) of the National Historic Preservation Act.

Mr. Riffin's letter (Exhibit B) indicates that he feels that discovery is inappropriate in abandonment proceedings. However, this Board already has addressed this objection when

lodged by Conrail and 212 Marin Boulevard, LLC, and has permitted discovery. See, e.g., Consolidated Rail Corp. - Ab. Ex. - in Hudson County, NJ, AB 167-1189X, served May 22, 2015. The discovery City et al now seek is not disruptive. There are no current filing deadlines set or applicable that forestall complete response to the instant request in this proceeding. Moreover, Mr. Riffin's own statements and evident bankruptcy call into question his intent, motivation, and ability to provide rail service as opposed to assistance to 212 Marin Boulevard, LLC et al (Mr. Hyman) in evasion of this Board's jurisdiction and public interest remedies. Discovery into these matters is clearly germane to this proceeding, in which Conrail and the LLCs for years have sought to secure the benefits they sought to achieve from an illegal de facto abandonment and evasion of this Board's jurisdiction.

Any objection by Mr. Riffin is now untimely. Conrail's parent corporation (Norfolk Southern) has already recently explained that Mr. Riffin is a serial abuser of the OFA process.[2] This Board has indicated that it will apply sanctions against his abusive conduct.[3] Should Mr. Riffin fail to respond

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[2] See generally Petition of Norfolk Southern Railway Company to Institute a Rulemaking Proceeding to Address Abuses of Board Processes, Ex Parte (EP) 727.

[3] See Petition of Norfolk Southern Railway Company to Institute a Rulemaking Proceeding to Address Abuses of Board Processes, Ex Parte 727, served Sept. 23, 2015, at 4 (Board suggests it will

forthwith with the requested documents, he should be barred from any further participation in the OFA portion of this proceeding.

In sum, this Board should order Riffin immediately to respond to Exhibit A fully and completely without further objection, and bar him from any further participation in the OFA portion of this proceeding should he fail to do so. City requests that Riffin be required to respond fully and completely and without objection no later than May 27, 2016.

Finally, City et al reiterates its wish to pursue its Offer of Financial Assistance remedy, as well as its other remedies, in this proceeding pursuant to an orderly schedule established by this Board. City continues to receive inquiry from shippers in this regard. The proceeding has been much delayed. City et al do not wish to delay the proceeding by further motions; this motion is necessary due to Mr. Riffin's schemes and actions, and non-compliance with discovery procedures.

If some further response to Riffin is necessary or prudent, City et al request this Board to order such response to be due after the return of counsel for City et al on May 27.

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engage in "increased enforcement" of procedural rules to address abuse issues in context of Norfolk Southern's petition to deal with abusive practices by Riffin in OFA proceedings).

Respectfully submitted,

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
Counsel for City et al

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 2d day of May 2016 addressed to the parties or their representatives per the service list below, unless otherwise indicated.

Service List
(current as of December 2015)

Daniel Horgan,
Waters, McPherson, McNeill, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, NJ 07096 (LLCs)

Robert M. Jenkins III
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101 (Conrail)

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

Massiel Ferrara, PP, AICP, Director
Hudson County Division of Planning
Bldg 1, Floor 2
Meadowview Complex
595 County Avenue
Secaucus, NJ 07094

Joseph A. Simonetta, CAE,
Executive Director
Preservation New Jersey
414 River View Plaza
Trenton, NJ 08611

Justin Frohwith, President
Jersey City Landmarks Conservancy
54 Duncan Avenue
Jersey City, NJ 07303

Jeremy Jacobson, President
Harsimus Cove Association
20 Erie Street, Apt. #2
Jersey City, NJ 07302

President
Hamilton Park Neighborhood Association
PMB 166
344 Grove Street
Jersey City, NJ 07302

Jill Edelman, President
Powerhouse Arts District Nbd Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

President
The Village Nbd Ass'n
365 Second Street
Jersey City, NJ 07302

President
Van Vorst Park Association
91 Bright Street
Jersey City, NJ 07302

President
Historic Paulus Hook Ass'n
192 Washington Street
Jersey City, NJ 07302

Dennis Markatos-Soriano
Exec. Director
East Coast Greenway Alliance
5315 Highgate Drive, Suite 105
Durham, NC 27713

Gregory A. Remaud
Conservation Director
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Sam Pesin, President
Friends of Liberty State Park
580 Jersey Ave., Apt. 3L
Jersey City, NJ 07302

Aaron Morrill
Civic JC
64 Wayne St.
Jersey City, NJ 07302

Eric S. Strohmeyer
Vice President, COO
CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069

James Riffin
PO Box 4044
Timonium, MD 21094

Supplemental Service List

Per a prior request of the Board, service is also made on the following addressees, although none is believed to continue to represent a party in the proceeding and/or is otherwise superceded.

Stephen Marks
Hudson County
583 Newark Avenue
Jersey City, NJ 07306

Gretchen Scheiman
Historic Paulus Hook Association
121 Grand Street
Jersey City, MJ 07302

Michael Selender
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303-0068

Brian P. Stack
411 Palisade Avenue
Jersey City, MJ 07307

Dan Weber
Van Vorst Park Association
2989 Varick Street
Jersey City, NJ 07302

Exhibit A

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)

Request for the Production of Documents
Interveners City et al to James Riffin

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 James Riffin ("Riffin") deliver copies of the documents requested below to counsel for City et al his address below on or before that date pursuant to reasonable terms for payment for costs of duplication and delivery agreed to in writing with CNJ. To save time and money, scans may be forwarded by email attachment to the email address provided in the signature block, provided originals will be available upon request.

Definitions. 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.

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 the subject of the abandonment proceeding bearing STB docket AB 167 (Sub-no. 1189X).

"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.

Additional instructions. If Riffin claims 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.

City et al request a response as soon as reasonably practicable, and no later than Tuesday, April 19, 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 Riffin's receipt of the additional responsive material.

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

1. All documents received or possessed by Riffin or any representative of Riffin from the LLCs or any person acting on behalf of the LLCs [including but not limited to the manager of the LLCs (Mr. Steve Hyman) or attorneys for the LLCs], relating in any fashion to the Harsimus Branch, including but not limited to disposition of property in the Harsimus Branch and legal or regulatory disputes concerning the Harsimus Branch, or relating to AB 167 (Sub-no. 1189X).

2. All documents (not otherwise provided pursuant to doc. Req. 1) sent or received by Riffin or on his behalf to or from (a) the LLCs (or any officer, employee, attorney or representative thereof) or (b) Consolidated Rail Corporation (or any officer, employee, attorney, or representative thereof) relating to the Harsimus Branch, other than legal pleadings filed with the Surface Transportation Board.

3. All documents relating to Riffin's financial responsibility for purposes of making an "offer of financial assistance" in AB 167 (Sub-no. 1189X), including applications for loans or any line of credit, or solicitations for co-investors.

4. All petitions (including amendments thereto) in bankruptcy proceedings and all final orders in bankruptcy proceedings of James Riffin which orders involve the discharge or partial discharge of debts owed by said Riffin, including but not limited to petitions and orders in bankruptcy proceedings referenced by the Surface Transportation Board in its Decision served March 24, 2016 in Finance Docket 35873 at p. 2 footnote 2.

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 28 March 2016 of these document requests by email attachment addressed to jimriffin@yahoo.com and by US Mail, postage pre-paid, Express (next day delivery), to James Riffin, P.O. Box 4044, Timonium, MD 20094.

Charles H. Montange

Exhibit B

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

TO: Charles Montange 426 NW 162nd Street Seattle, WA 98177 (206) 546-1936

RE: Harsimus

DATE: March 30, 2016

Dear Mr. Montange:

I received your discovery request. I will formally respond on April 19, 2016.

For now, I will give you the following informal / unofficial comments:

Discovery is disfavored in abandonment proceedings. In a decision served ten years or so ago, the STB held that the only 'discoverable' information is that listed in 49 CFR 1152.27 (a)(1). Were the STB to permit parties to serve discovery requests on other parties, and obtain the type of information you requested, that would likely totally gut the OFA process.

Keep in mind, Horgan could send the same to you.

I will say: There are no agreements between me and Mr. Hyman. On occasion, I make suggestions to him. To date, he has never followed any of my suggestions.

I have been advocating for several years now, that the parties reach a settlement. To date, no one has been willing to even discuss the possibility of reaching a settlement. But I keep trying.

I am sending you a copy of my Petition for Writ of Certiorari. In paragraph 73, I outline my most recent settlement proposal. So far, no one has expressed any interest in pursuing a settlement option. I have advocated for the creation of a transportation corridor over the Embankment, and have advocated for giving the City three Embankment tops for parks. So far, no one has expressed any interest in what I have been advocating.

So I am about to try another approach. I plan to make an attempt to light a fire under Conrail. If Conrail feels enough heat, perhaps Conrail will be more amenable to a settlement.

Rumor has it that the STB is short on cash, and does not have enough money to conduct the public hearings required by your Section 106 request. Until the Section 106 process has concluded, the OFA process cannot start. So it could be awhile before any OFA process starts.

Let me know if the City might be amenable to a settlement which would provide the City with three Embankment tops for parks, plus a transportation corridor between the Light Rail line and Journal Square, in exchange for the City granting development rights for the remainder of the properties. (Perhaps on the condition that the developer be someone other than Mr. Hyman.)

Exhibit C

Subject: Re: AB 167-1189X, document requests to Mr. Riffin

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com;

Date: Thursday, April 28, 2016 2:11 PM

I forgot about your document request. Thank you for reminding me. I am working on my response, which I hope to e-mail to you on Friday.

On Tuesday, April 26, 2016 3:45 PM, C. Montange <c.montange@frontier.com> wrote:

Mr. Riffin, the document response with which you were served is now one week late. I have received no formal response. Do you intend any further response? Please inform me immediately. The City is prepared to file a motion to compel and reserves the right to seek sanctions.

On Wednesday, April 20, 2016 3:56 PM, C. Montange <c.montange@frontier.com> wrote:

Response was due on April 19, and has not yet been received. Did you post it?

On Monday, March 28, 2016 11:42 AM, C. Montange <c.montange@frontier.com> wrote:

Document requests in the above proceeding to Mr. Riffin in attachment; original by express mail, delivery tomorrow.

Exhibit D

Con

No. 16 -

IN THE SUPREME COURT OF THE UNITED STATES

JAMES RIFFIN

PETITIONER

V.

SURFACE TRANSPORTATION BOARD AND
UNITED STATES OF AMERICA

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEAL

FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

James Riffin, *pro se*
Petitioner
P. O. Box 4044
Timonium, MD 21094
(443) 414-6210
March 25, 2016

64. For the Respondents to argue that Riffin has no business interests / pursuits in the Third Circuit, is to totally ignore what Riffin has done, continues to do, and will continue to do in the future.

65. The main driving force is the AB 167 (Sub. No. 1189X) proceeding. In this proceeding, Conrail is attempting to obtain abandonment authority for 1.36 miles of rail line in Jersey City, NJ.

66. The problem is: In 2005, Conrail sold six acres of the underlying real estate, for $3 million, to a real estate developer named Steve Hyman, who lives in New York City. Shortly after the sale, Jersey City decided that it wanted that real estate, to be used as a park /trail. (It was first offered to Jersey City. Jersey City had no interest. When a new mayor and council persons were elected, in 2006, the new mayor and council persons decided they wanted the real estate.)

67. Jersey City hired a well-known rails-to-trails lawyer, named Charles Montange, who advised the City that (1) the real estate sold to Mr. Hyman, was an un-abandoned line of railroad (last used in 1984), and that (2) the City could legally obtain the line-of-railroad easement impressed upon the real estate, for Zero Dollars, pursuant to an Offer of Financial Assistance proceeding. And once that rail-easement was obtained, two years later, with Conrail's consent, five years later, without Conrail's consent, the City could convert that rail easement into a 'Trails' easement, and thus keep the real estate forever. And thus began over 10 years of litigation, which continues to this day.

68. Jersey City filed a Notice of Intent to File an Offer of Financial Assistance ("**OFA**") in 2009. Shortly, the Surface Transportation Board ("**STB**") will render a Supplemental Environmental / Historic Report. Once the public has been given an opportunity to file comments regarding that Report, the STB then will get to the merits of the case: the OFA process.

69. Jersey City has a verified statement from a shipper, who wants rail service in Jersey City. After a very public meeting, in which all participants (except Mr. Hyman's lawyer) advocated in favor of Jersey City acquiring Mr. Hyman's property via the OFA process, the City Council passed a Resolution authorizing Jersey City to acquire Mr. Hyman's property / Conrail's rail easement, via the OFA process. Jersey City hired an engineering firm, which has prepared 'sealed' drawings, showing how to reinstitute rail service. Jersey City now has the three criteria for a successful OFA: Shipper interest; Public Support; Economically feasible. Jersey City also has about $6 million in dedicated funds to put rail back on the ground. Conrail has filed a pleading with the STB stating that the purchase price for Mr. Hyman's property is Zero Dollars, and that the average price for the land to the west of Mr. Hyman's property, is $[redacted] per acre. So for $[redacted] or so, Jersey City can acquire 6 acres of Conrail's land, and six acres of Mr. Hyman's land. A really good price. Particularly since Mr. Hyman's land is worth about $40 million today, given its location.

70. So what does this have to do with Riffin? Simple: Riffin has offered to acquire Conrail's rail easement across Mr. Hyman's land, and has offered to acquire as much of Conrail's land as the STB will permit, via the OFA process. In effect, Riffin will submit a competing OFA offer. Since Conrail is beholding to Mr. Hyman (Conrail misrepresented to Mr. Hyman that the line was excepted 'spur' track), it would be expected that Conrail would chose to negotiate an OFA with Riffin, rather than Jersey City, particularly if Mr. Hyman makes that suggestion to Conrail. (Conrail is hoping it can reduce its legal liability to Mr. Hyman.)

71. The difference between Riffin acquiring the rail easement, and Jersey City acquiring the rail easement, is that Riffin is willing to let Mr. Hyman use the 'air rights' above a basic rail easement. In effect, Riffin will permit Mr. Hyman to do that which he has long desired to do: Build high-rises above

the rail easement.

72. Needless to say, Jersey City has no intention whatsoever of letting Mr. Hyman so much as step foot on Mr. Hyman's property, well alone develop the property, or even get his purchase money back.

73. To make it work, Riffin has suggested that Conrail, Mr. Hyman and Jersey City reach a settlement: Conrail agrees to convey the rail easement to Riffin, along with a number of additional rail assets, such as trackage rights on the nearby Bayonne Industrial Track, and trackage rights to specific locations in the Northern New Jersey Shared Assets Area. Conrail agrees to convey to Mr. Hyman 12 acres or so of adjacent Conrail property. Riffin agrees to provide rail service on the rail easement. In exchange for giving Mr. Hyman air rights over the right of way, Mr. Hyman agrees to give Riffin a percentage interest in whatever development occurs, and provides funds for freight rail operations. Riffin agrees to permit Jersey City to use the tops of three of the six one-acre Embankment sections, for parks. Riffin agrees to create a 30-foot wide by 30-foot high rail / trail corridor, from the Hudson Bergen Light Rail Line to Journal Square, over the top of each Embankment section. Riffin provides freight rail service at ground level. The elevated rail corridor can be used for a commuter rail line connecting the Journal Square rail station with the Light Rail Line. Jersey City agrees to grant development rights on three of the Embankment sections, and on the adjacent Conrail 12-acres. Norfolk Southern and CSX, the owners of Conrail, agree to grant Riffin trackage rights to Belle Mead, NJ (over CSX's Reading Line), and to Scranton, PA. (Riffin gets some of the D&H's trackage rights.) Riffin gets the D&H's Oak Island Rail Terminal. Mr. Hyman agrees to give up his right to sue Conrail pursuant to 49 U.S.C. 11704(b). (Conrail is liable for damages due to Conrail's failure to follow the dictates of 49 U.S.C. 10903 – Conrail failed to abandon its Harsimus Line prior to selling the underlying real estate.) Riffin

agrees to work with the adjacent Metro Plaza owners, to ensure that the rail easement impressed on that property does not materially adversely impact development of that property. Very little actual cash changes hands. Non-cash assets are exchanged. (Trackage rights / air rights / forgiveness of liabilities.) Freight rail service is provided to Jersey City / Newark shippers. Goods are moved via rail, rather than via trucks.

74. A major issue that is about to occur, is the opening of the expanded Panama Canal, presently scheduled for June, 2016. When that occurs, really huge container ships (13,000 containers vs the current 4,000 containers per ship) will carry Asia-origin goods to the East Coast, rather than just to the West Coast. (Presently Asia-origin goods are shipped to the West Coast, then railed to the Mid-West / East Coast.) Containers bound to the I-81 corridor in Pennsylvania (where many major distribution centers are located), will arrive in Jersey City. Presently, those containers are scheduled to be trucked across New Jersey and Pennsylvania to the I-81 corridor. Riffin desires to rail those containers to the I-81 corridor, via the D&H's trackage rights from the D&H's Oak Island Terminal to the I-81 corridor, thereby keeping those trucks off of the already-overcrowded Interstate Highways.

75. So now the Court knows Riffin's 'business interest' in the Third Circuit: To help Mr. Hyman save his Jersey City property / To provide rail service within a 150-mile radius of Jersey City / to rail Municipal Solid Waste ("**MSW**") to the Scranton landfill, rather than trucking that MSW to that landfill.

RIFFIN'S PRINCIPAL OFFICE

76. Riffin's business interests (provision of freight rail service) are in Central New Jersey and Eastern Pennsylvania, between Jersey City and Allentown / Scranton PA. While he could rent office space in Jersey City, Allentown and Scranton, he could also use a mobile office. Essentially, he could take his

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10. Jersey City hired a well-known rails-to-trails lawyer, named Charles Montange, who advised the City that (1) the real estate sold to Mr. Hyman, was an un-abandoned line of railroad (last used in 1984), and that (2) the City could legally obtain the line-of-railroad easement impressed upon the real estate, for Zero Dollars, pursuant to an Offer of Financial Assistance proceeding. And once that rail-easement was obtained, two years later, with Conrail's consent, five years later, without Conrail's consent, the City could convert that rail easement into a 'Trails' easement, and thus keep the real estate forever. And thus began over 10 years of litigation, which continues to this day.

11. Jersey City filed a Notice of Intent to File an Offer of Financial Assistance ("**OFA**") in 2009. Shortly, the Surface Transportation Board ("**STB**") will render a Supplemental Environmental / Historic Report. Once the public has been given an opportunity to file comments regarding that Report, the STB then will get to the merits of the case: the OFA process.

12. Jersey City has a verified statement from a shipper (Pace Glass), who wants rail service in Jersey City. After a very public meeting, in which all participants (except Mr. Hyman's lawyer) advocated in favor of Jersey City acquiring Mr. Hyman's property via the OFA process, the City Council passed a Resolution authorizing Jersey City to acquire Mr. Hyman's property / Conrail's rail easement, via the OFA process. Jersey City hired an engineering firm, which has prepared 'sealed' drawings, showing how to reinstitute rail service. Jersey City

now has the three criteria for a successful OFA: Shipper interest; Public Support; Economically feasible. Jersey City also has about $6 million in dedicated funds to put rail back on the ground. Conrail has filed a pleading with the STB stating that the purchase price for Mr. Hyman's property is Zero Dollars, and that the average price for the land to the west of Mr. Hyman's property, is $[redacted] per acre. So for $[redacted] or so, Jersey City can acquire 6 acres of Conrail's land, and six acres of Mr. Hyman's land. A really good price. Particularly since Mr. Hyman's land is worth about $40 million today, given its location.

13. So what does this have to do with Riffin? Simple: Riffin has offered to acquire Conrail's rail easement across Mr. Hyman's land, and has offered to acquire as much of Conrail's land as the STB will permit, via the OFA process. In effect, Riffin will submit a competing OFA offer, backed with Mr. Hyman's considerable assets. Since Conrail is beholding to Mr. Hyman (Conrail misrepresented to Mr. Hyman that the line was excepted 'spur' track), it would be expected that Conrail would chose to negotiate an OFA with Riffin, rather than Jersey City, particularly if Mr. Hyman makes that suggestion to Conrail. (Conrail is hoping it can reduce its legal liability to Mr. Hyman.)

14. The difference between Riffin acquiring the rail easement, and Jersey City acquiring the rail easement, is that Riffin is willing to let Mr. Hyman use the 'air rights' above a basic rail easement. In effect, Riffin will permit Mr. Hyman to do that which he has long desired to do: Build high-rises above the rail easement.

15. Needless to say, Jersey City has no intention whatsoever of letting Mr. Hyman so much as step foot on Mr. Hyman's property, well alone develop the property, or even get his purchase money back.

16. To make it work, Mr. Hyman will provide the financing

to back Riffin's OFA offer. That will make Riffin 'financially responsible.' Riffin will also get a percentage interest in whatever development occurs.

17. So Riffin not only gets paid to provide rail service ([redacted] projects to ship [redacted] rail cars a year, at $300 per rail car for Riffin), but also gets a percentage of whatever development profits are generated.

18. However, the OFA process is anything but certain. Mr. Hyman strongly desires to abort the OFA process, before it can begin. IF the OFA process can be aborted, then Jersey City will be prevented from acquiring Mr. Hyman's property via the OFA process. (It could still acquire Mr. Hyman's property via Eminent Domain, but it would have to pay 'fair market value,' which is around $40 million, not Zero Dollars.)

19. So Mr. Hyman's legal strategy is to try to abort the OFA process. The best way to abort that process, is to lure the shipper away. Without a shipper, there is no basis for an OFA proceeding.

20. To lure [redacted] away, and any other putative shipper, an alternative rail site needs to be found, and obtained. The best alternative rail site would be the Delaware and Hudson's ("**D&H**") / Canadian Pacific's ("**CP**") Oak Island rail terminal, in Newark, NJ. [redacted] and any other shipper, would love to be able to use the Oak Island rail terminal. (It is 10 acres or so in size, in an industrial area, and has ready access to three Class I rail carriers, and to the Interstate Highway system.)

21. In the proceeding that is the subject of this Petition for Review, Norfolk Southern ("**NS**") is seeking to acquire 282 miles of D&H rail line, in Pennsylvania and New York. In order to make that transaction work, the D&H **absolutely must** get discontinuance authority for 680 miles of its trackage rights (in PA, NJ, MD, DC, and VA).