

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NORTH AMERICA FREIGHT CAR ASSOCIATION)	233602
)	ENTERED
)	Office of Proceedings
)	December 28, 2012
)	Part of
Complainant,)	Public Record
)	
v.)	Docket NOR 42137
)	
BNSF RAILWAY COMPANY, et al)	
)	
)	
Defendant.)	

JOINT REPORT PURSUANT TO 49 C.F.R. §1111.10(a)

Complainant, North America Freight Car Association (“NAFCA”), and the Defendants in this case,¹ hereby jointly submit this report as required by 49 C.F.R. § 1111.10(a), and their agreed upon approach for establishing a procedural schedule in this case. In support hereof the parties state the following:

1. The Defendants filed their answers to NAFCA’s complaint in this proceeding on December 10, 2012 pursuant to the Board’s decision served on November 30, 2012.
2. The Board’s rules of practice require the parties in this case to “meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed. 49 C.F.R. §1111.10(a). Counsel for NAFCA and the Association of American Railroads

¹ BNSF Railway Company, CSX Transportation, Inc., Canadian National Railway Company, The Kansas City Southern Railway Company, Norfolk Southern Railway, Canadian Pacific Railway Company, Union Pacific Railroad Company, and Association of American Railroads.

("AAR") met in person on December 13, 2012, with counsel for the other Defendants participating by telephone. Counsel for all the parties further conferred by telephone conference call on December 19, 2012.

3. During the course of their discussions, the parties have discussed but have not yet agreed upon all of the terms of a proposed protective order governing the exchange of confidential and highly confidential information in this case. The parties anticipate filing either a joint motion for protective order, or separate filings asking the Board to resolve certain issues on this matter, in the near future.

3. Section 1111.10(a) requires the parties, within 19 days of the filing of the answer to a complaint, to either jointly or separately file a report setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

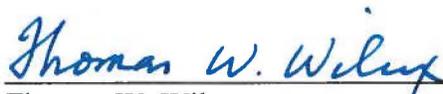
4. Discovery has been served by NAFCA on the railroad defendants, and on NAFCA by the AAR. The parties have mutually agreed that, due to the intervention of the 2012 Holiday Season, their respective written responses and objections to each other's discovery requests will be submitted on January 7, 2013. Counsel for both parties have also started the process of gathering responsive information and documents and ascertaining an appropriate period for discovery in this case. However, (1) the AAR's discovery requests are directed to all 30 of NAFCA's members, and (2) NAFCA's requests are directed to all eight defendants. Many of the necessary client representatives are presently not available because they are on vacation for the holidays. Accordingly, the parties are presently unable to provide the Board, by the December 31, 2012 reporting deadline established by §1111.10(a), with a proposed procedural schedule that includes a defined period of time for completion of discovery.

5. Nevertheless, the parties have conferred and agree upon the following schedule for submitting evidence in this proceeding: Complainant's Opening Evidence – 60 days from the close of discovery; Defendants' Reply Evidence – 120 days from the close of discovery; Complainant's Rebuttal Evidence – 150 days from the close of discovery.

6. The parties have agreed to supplement this report to the Board no later than January 21, 2013 and to propose a final procedural schedule that contains a defined period for the completion of discovery in this case, and the periods for submitting evidence set forth above.

Respectfully submitted,

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