

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

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

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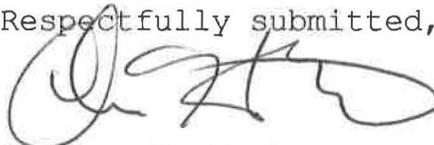
Hon. John P. Dring, Administrative Law Judge
Federal Energy Regulatory Commission
Office of Administrative Law Judges
888 First Street, N.E.
Washington, DC 20426

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

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

proceeding, Mr. Riffin evidently spent about two hours total (1) forwarding a selection of some 100 emails to counsel for Conrail, the intervenor LLCs, and City et al and (2) drafting a three-page letter to ALJ Dring objecting to further response and making arguments about his proposed OFA. City et al objected to the arbitrary limitations in Riffin's response (and to a clear misrepresentation in the letter as drafted). Mr. Riffin replied by email on August 26 that "[i]f you want any more, you will have to ask ALJ Dring to order it." Regrettably, City et al must now again request ALJ Dring for relief against Riffin.

Background

City et al on March 28, 2016, served (by email and Express Mail) upon James Riffin the document requests set forth in Exhibit A. The document requests call for a response by April 19. Although Mr. Riffin several times promised a response (as set forth in our first motion to compel), he failed to do so. On May 2, City et al accordingly filed a motion to compel. At that point, Mr. Riffin served (by US Mail postmarked on that date) a response, which amounted to a set of objections, to City et al. At the same time, Riffin filed a flurry of papers in reply to the motion to compel contending, inter alia, the original motion to compel was moot in light of his filing belated objections. City et al agreed that the original motion was moot, and withdrew that motion in a filing dated June 7, and

on July 5, filed a second motion to compel. On the same date (July 5), the Board served an order in this proceeding assigning discovery disputes to Administrative Law Judge Dring. Riffin filed another opposition to City et al's second motion to compel, suggesting among other things that he had no intelligible responsive documents (emails). In particular, Riffin indicated that he saves emails to a flash drive, which on retrieval "is not comprehensible." Riffin Reply to City's July 5, 2016 Motion to Compel, served July 28, 2016 at p. 12 (with exhibit). As Riffin acknowledges (id.), he made a similar representation that he had no intelligible responsive documents in a letter to counsel.

Judge Dring issued an order (served August 5) providing for a hearing in Washington, D.C., on August 24. Counsel for City et al arranged for a witness (Eric Strohmeier), who could attest that, contrary to Riffin's representations, Riffin in fact had intelligible responsive documents, to be present at the hearing. On the evening before the hearing, Riffin ascertained that the witness (Strohmeier) would be present, and unexpectedly crashed counsel's dinner meeting with the witness. Contrary to his prior claims, he there acknowledged that his computer held responsive intelligible documents and offered to make those available by close of business Friday, August 26. When he showed up at the hearing (somewhat tardily), he reiterated this

position, and it resulted in an order to produce documents in this proceeding, served by Judge Dring on August 25. Conrail also requested copies.

On Thursday, August 25, Mr. Riffin forwarded some 100 emails (Mr. Riffin claims 103, but several of those appear to be housekeeping in nature) from 2015 and 2016 chiefly from Mr. Steve Hyman (manager of the LLCs) to Mr. Riffin, with a smattering of emails from Victoria Hyman (Mr. Hyman's wife, who is represented by the Hyman interests to own the LLCs) and one of the LLCs' attorneys (Horgan) to Mr. Riffin. Mr. Riffin then circulated an email indicating that he had spent roughly two hours on this effort (and on preparing a letter, appended to his email, to Judge Dring) and declined to spend any more time. His letter to Judge Dring accused counsel for the City of misrepresenting how easy it would be to forward emails (evidently Mr. Riffin has so many responsive emails that it would take more than two hours to forward them). City et al objected to Mr. Riffin's curtailment.¹ Mr. Riffin nevertheless refused to forward any more, stating in an email dated August 26 that "[i]f you want any more, you will have to ask Judge Dring." Exhibit C.

¹ A copy of this exchange, including the first page of what Riffin represents is a version of his letter to Judge Dring, is contained in Exhibit B.

The letter to Judge Dring furnished by Riffin to City et al on August 25 represents that Riffin supplied his bankruptcy docket numbers to City et al on that date. Riffin claims to counsel that he sent a revised version of his letter to Judge Dring correcting the error, but he has declined to furnish a copy of the revised letter. Even if the revision was limited to a date correction, this renders what Mr. Riffin sent to Judge Dring, if Riffin in fact sent a letter to Judge Dring, an impermissible ex parte communication. In all events, the draft letter which we received by email goes well beyond housekeeping matters in pp. 2-3, and amounts to a pleading arguing points about the case. The letter apparently was not served on any parties as a pleading, violating service rules. Riffin has twice been admonished by STB to serve his pleadings on the parties to the proceeding. Decisions in AB 167-1189X, served July 25 and August 24, 2015. The second warning stated that improperly served documents would be rejected. The Riffin letter, if he sent a letter, must therefore be rejected on multiple grounds.

The fact that Riffin has more than one hundred responsive emails is not grounds to terminate discovery. It instead shows that Riffin was in extensive communication with the Hyman interests on matters relating to his OFA, corroborating the need for discovery. Had Riffin put 10 percent as much effort into

making documents available in accordance with the August 25, 2016 order as he has put into resisting discovery on spurious grounds, he would have saved himself time, not to mention the time his tactics have consumed for City et al, STB, and the Administrative Law Judge assigned this case.

Deficiencies. Turning to the limited emails that Mr. Riffin did produce in the roughly two hours he says he spent at the library working on a letter to Judge Dring, his discovery response fails to meet the requirements of the order served August 25, 2016, in all particulars: (1) Riffin appears to have deleted all identification of the recipients of the emails (examples in Exhibit D) other than himself, or text and attachments, so he has not furnished such mails in their totality; (2) in most cases in which the email he forwarded is an obvious "reply," he has failed to include the original email (examples in Exhibit E)²; (3) he has failed to include emails from himself to any representative or agent for the LLCs although those impliedly exist given the emails to him in apparent response (e.g., Exhibit E); (4) he has failed to

² Mr. Riffin has informed counsel that he uses Yahoo, and one can easily recover original emails to which an email was sent in reply on Yahoo-based email systems with which counsel is familiar. Riffin's claim of lack of technological prowess in operating word processing and email systems in order to recover documents is belied by his ability to prepare and to transmit documents in multiple STB and federal judicial proceedings.

include emails prior to 2015, although City et al is aware from other sources that such emails exist (e.g., Exhibit F), just as he has failed to disclose emails furnished us by CNJ from Hyman to Riffin concerning efforts to evade STB and STB-mediated remedies (Exhibit F); (5) he has omitted any communications between himself and representatives of the LLCs other than the Hymans and Horgan, even though such emails are known to exist (an example of such an email, in City et al's hands from another source, is set forth in Exhibit G); (6) Mr. Riffin refused even to search for exchanges with Bruce Nagel, even though City et al knows that such exist from another source (Exhibit G)³; (7) Riffin appears to have omitted all emails between himself and the Hyman interests bearing on the lawsuit Riffin filed in the past 30 days against Forest City over the Harsimus Branch (see excerpted Complaint, Exhibit H).⁴ This omission is

³ Mr. Riffin professed not to remember a Nagel. City et al believe that Bruce Nagel is another attorney consulting now or in the past with the Hyman interests.

⁴ Forest City is redeveloping the so-called Metro Plaza, which is a multi-acre site formerly occupied by the Harsimus Cove Yard. Riffin seeks to block hundreds of millions of dollars' worth of development on the site. See local press articles in Exhibit I. Riffin's Complaint in Riffin v. Forest City Ratner Companies, et al, U.S.D.C. N.J. 16-CV-4433-ES (Ex. H) seeks to enjoin the redevelopment pending outcome of AB 167-1189X. Riffin predicates his standing to sue on the STB's acceptance - in violation of its precedent - of a notice of intent to OFA in AB 167-1189X. According to press clippings in Exhibit I (item 1), Riffin says his purpose is to force Conrail and the City to negotiate with the Hyman interests. In short, Riffin is inter

unconscionable, since the lawsuit is predicated on the Riffin OFA and Riffin has declared that its chief purpose is to force Conrail and the City to "settle" with the Hyman interests (Exhibit I, item 2). In that suit, Riffin claims he has a property interest in the Harsimus Branch on the basis of his notice of intent to OFA, and he seeks to enjoin redevelopment of roughly 17 acres of downtown Jersey City presumably (according to his suggestions to the press) until the Hyman interests and presumably himself are satisfied. Kevin Coakley, attorney for Forest City, authorizes City et al to state that Hyman (who brought along Riffin) met with Forest City concerning the suit, Hyman said he was compensating Riffin in the event of success, but Forest City rejected their demands.⁵ Mr. Riffin's discovery response is bereft of all documents relating to any of these OFA-based shenanigans.⁶ A prolific emailer, Riffin obviously has other emails and documents concerning the Harsimus Branch that he is failing to disclose in violation of the August 25 order. Indeed, the LLCs' counsel (Horgan) recently supplied one (a demand letter to Forest City dated October 2015) to counsel for

alia proposing at STB to file an abusive OFA, and simultaneously to mis-use the abusive OFA in civil litigation.

⁵ Mr. Hyman's counsel (Horgan) has acknowledged to counsel that Hyman and Riffin met with Forest City.

⁶ Another source supplied City et al with an email from Hyman to Riffin on the lawsuit dated Sept. 12, 2016 (Exhibit I, item 4), so doubtless there are many more undisclosed communications.

City et al. See Exhibit J (excerpts, because the entire document is voluminous).⁷ Other examples of Riffin material supplied by sources other than Riffin include Exhibit G and, for that matter, Exhibit I's item 4.

In short, Riffin's earlier claims of lack of documents or incomprehensive documents are belied by the 100 emails he has supplied. Any claim that he makes as to supplying all responsive documents is belied by what he has supplied, and by documents and emails that Riffin made available to CNJ Rail or the LLCs and which they furnished to City et al in response to discovery against CNJ, or in one case from the LLCs, voluntarily. Mr. Riffin arbitrarily stopped his response because he felt that spending two hours on the matter (evidently inclusive of the time to prepare a three-page ex parte communication to Judge Dring) was already too much effort on his part.

Paraphrasing what attorneys have already said in other proceedings, Mr. Riffin is an individual who has been recognized and admonished by federal and state courts, and by the Surface Transportation Board ("STB") as a frequent litigant with a history of inappropriate filings, disregard for applicable

⁷ Unfortunately, this is the only responsive document which the LLCs have made available in connection with a document request that City et al served upon them. Efforts to negotiate a satisfactory discovery response with the LLCs have terminated.

procedures, bad faith filings, and an abusive use of litigation.⁸ Although Mr. Riffin has a legal degree, he "is neither as licensed attorney nor practitioner approved to practice before [STB]." Norfolk Southern Ry. Co. - Petition Exemption - in Baltimore City and Baltimore County, AB 290-311X, served Jan. 29, 2010. This does not excuse him, for he nonetheless is a "person" appearing before the agency, and by regulation is bound "to the standards of ethical conduct required of practice before the courts of the United States." 49 C.F.R. 1103.11.

Norfolk Southern Railway Company filed a Petition for Rulemaking to Address Abuses of Board Processes, docketed at EP 727, on May 26, 2015. The Petition focused on abuses by Riffin

⁸ See, e.g., Balt. County v. Riffin, 2007 U.S. Dist. LEXIS 99000, *3-4 (D. Md. Oct. 4, 2007) ("Riffin has made numerous attempts to disrupt valid state proceedings by filing civil rights complaints seeking injunctive relief against Baltimore County and by removing proceedings to this Court, forcing state proceedings to a grinding halt. Riffin's use of federal litigation to stonewall efforts by local authorities to enforce state law is abusive and this Court declines to facilitate those efforts any further."); Norfolk S. Ry. - Aban. Exemption -- in Norfolk & Virginia Beach, Va., AB 290 (sub no. 293X) (STB served Nov. 6, 2007), appeal dismissed sub nom Riffin v. STB, 331 Fed. Appx. 751 (D.C. Cir. 2009) (concluding, based on strong evidence that Mr. Riffin had filed in bad faith, that "we will closely scrutinize any future filings by Mr. Riffin ... and we strongly admonish Mr. Riffin that abuse of the Board's processes will not be tolerated"); Riffin v. Balt. County, 2012 U.S. Dist. LEXIS 98213, *13-15, 2012 WL 2915251 (D. Md. July 16, 2012) ("Mr. Riffin's litigation history bespeaks an utter disregard for the Court's procedures, which can only be remedied by appropriate sanction."). See also Exhibit I, item 1 (Jersey Digs news article).

of the OFA process. After taking comments, STB declined to issue the relief sought by NS (Decision, EP 727, served Sept. 23, 2015). Echoing prior admonitions by STB and the courts concerning Riffin (e.g., note 7, supra), STB indicated it would instead more vigorously enforce existing regulations dealing with inappropriate behaviors. Slip op. at 4. The agency also said it would institute a proposed rulemaking to examine its OFA process. (The OFA process has broken down in AB 167-1189X, where the agency has vacated the schedule provided by statute and its regulations, and has yet to issue a schedule, over 15 months after City sought - with Conrail consent - an expedited one.⁹) Failure to deal with Mr. Riffin through enforcement of discovery sanctions and regulations governing inappropriate participation in the agency's processes results in higher costs for litigants, the agency, and ultimately bad law in the form of efforts to "control" Mr. Riffin's behavior outside the sanction process. City et al request that, instead of tolerating antics,

⁹ See Decision in AB 167-1189X, served Nov. 2, 2015 (denying City's request for a schedule and allowing Riffin to file notice of intent to OFA six years out of time). Although STB has failed to provide a schedule for an OFA or other relief, and although the Hyman interests have sought through state court litigation to prevent the City from seeking any federal remedies, the Hyman interests efforts so far have been unsuccessful. The City remains resolute in seeking to vindicate its STB rights and remedies, and state remedies like NJSA 48:12-125.1 that apply to lines subject to STB abandonment proceedings.

the discovery order of August 25 be enforced with sanctions rather than more admonitions.

There is another reason to act. As City et al has explained in its two motions to compel against Riffin (see first motion filed May 2 at p. 2 n.1 and Ex. D thereto - Riffin cert pet. excerpts, and second motion filed July 5 at Appendix pp. 11-15), this case involves a kind of cascade of abuse of STB jurisdiction, STB processes, and, now, by Riffin and the Hyman interests, STB remedies as well. In particular, Riffin's explanations for his proposed OFA are tantamount to an admission that he intends to abuse STB processes, jurisdiction, and remedies, purportedly to secure real estate profits to the tune of \$40 million (from time to time City et al hears more) for the Hyman interests from the unlawful sale of the Harsimus Branch by Conrail to the LLCs. Discovery to date shows that Mr. Hyman personally furnished Riffin with a copy of the 2008 Conrail/Hyman contract obligating Conrail to do the bidding of the Hyman interests. Mr. Riffin has explained that Hyman will compel Conrail to "accept" Mr. Riffin's proposed \$23,000 OFA, in return for which he will ensure Mr. Hyman gets to develop all, or at least the bulk, of the Harsimus Branch for non-rail purposes. In short, he represents that he expects compensation from the grateful Hyman interests.

In addition, Riffin has asserted to counsel (in front of a witness) that he (Riffin) is in dispute with Baltimore County (Maryland) over certain rail equipment parked on Riffin's Baltimore County property in violation of local land use requirements. Riffin claims that he wishes to acquire rail operating rights somewhere (within 150 miles he says) in order to assert that his Maryland property is railroad property under the exclusive jurisdiction of STB, so as to preempt Baltimore County land use regulations. See 49 U.S.C. 10501(b). This Board has previously noted that Riffin is not supposed to use rail proceedings to harass railroads into donating lines to him for his use in land use disputes in Maryland. Norfolk Southern Rwy Co. - Ab. Ex. - in Norfolk and Virginia Beach, AB 290-293X, slip at 8.

Neither real estate plays with New York area developers in Jersey City nor disputes over land use in Baltimore County, Maryland are what OFAs in Jersey City, New Jersey, are supposed to be about. To the contrary, STB has indicated that OFAs are to permit a party "genuinely interested in providing continued rail service on a line that would otherwise be abandoned to acquire the line for such continued rail service." Consolidated Rail Corporation, supra, AB 167-1190X, slip at 3.¹⁰

¹⁰ Mr. Riffin's proposed abusive conversion of the OFA process into a mechanism to acquire land for real estate development is

Mr. Riffin, with evident complicity of Mr. Hyman, has compounded abuse of the OFA process. As already suggested, Riffin has now sued Forest City Ratner, the developers of the Metro Plaza east of Marin Boulevard, contending that the Riffin notice of intent to OFA somehow vests Riffin with an equitable interest in the old Harsimus Cove yard east of Marin Boulevard. Riffin has evidently been discussing (including by email, see Exhibit G) such a suit since November (or perhaps October, see exhibit J) of 2015 with the Hyman interests. According to Exhibits G (Riffin memo to Nagel) and I (Riffin press statements), the purpose of the suit is to threaten the Forest City development to prompt Conrail and the City to "settle" with Hyman. This is in keeping with Riffin's earlier representation to the effect that his OFA was an instrument to promote the Hyman interests. According to attorney Kevin Coakley, who represents Forest City, Mr. Hyman explained to Forest City that he was compensating Riffin in the event Riffin advanced Hyman's interests.

The long and short of this is that Riffin and Mr. Hyman apparently have abusively positioned Riffin as an OFA applicant

not new: Mr. Hyman himself at one point attempted to use the same ploy in connection with Conrail's Edgewater Branch in AB 167-1036 in 1987. Interestingly, Riffin in his discovery response has supplied material Mr. Hyman provided him about Hyman's AB 167-1036 invocation of the OFA process.

to get the Harsimus Branch and other properties in the old Harsimus Cove Yard for non-rail purposes, and are now involved in litigation against Forest City, based on Riffin's abusive OFA, to further shakedown Conrail and/or the City, and now evidently Forest City, by holding up redevelopment of a portion of the Harsimus Cove yard. Since Riffin omitted any of his machinations with the Hyman interests associated with the rail line or yard east of Marin Boulevard, Riffin has not produced all responsive documents despite the August 25 order.

City et al seeks to use the discovery process to obtain information showing these abuses, now especially as to STB remedies. Mr. Riffin now abuses the discovery process to hide his substantive abuses.

Riffin's failure to respond fully to the August 25 discovery order simply compounds the abuse of process to date.

Argument

The continued abuse of STB discovery processes has now reached the point of violation of an order compelling discovery to which Riffin ostensibly consented, which required Mr. Riffin to turn over, inter alia, emails between himself and the Hyman interests by Friday August 26. The proper response is not more admonitions to Riffin and expenses for the parties seeking discovery but appropriate sanctions. Accord, Norfolk S. Ry - Ab. Ex. - in Norfolk and Virginia Beach, supra, slip op. p. 8.

The law on sanctions in discovery matters where, as here, a party (Riffin) is now in violation of an order, as set forth at 49 C.F.R. 1114.31(b)(2). STB may order facts concerning which discovery is sought to be deemed admitted, may prohibit the infringing party from introducing evidence, may strike pleadings of the infringing party in whole or in part, or may dismiss the party from the proceeding. In addition, or in lieu of the above, STB may order the infringing party to pay reasonable expenses, including attorneys' fees. Indeed, unless the Board otherwise penalizes the infringing party, the language in section 1114.31(b)(2)(iv) requires an award of attorneys' fees, unless the abusive conduct is found to be "substantially justified" or that other factors make penalization unjust. Riffin has been involved in innumerable STB and judicial proceedings. He holds a law degree. He has been repeatedly admonished by this agency and the courts for a decade or more, and despite all that experience and admonition has refused to adhere to a commitment embodied in Judge Dring's August 25 order. There is no legally cognizable excuse or justification for his continued obstreperous conduct, or the costs his obstreperous conduct has forced this agency and City et al to incur.

There are only three sanctions enumerated in section 1114.31(b)(2) that will remedy Mr. Riffin's obstreperous conduct

in this proceeding: (1) dismissal of Mr. Riffin from the proceeding; (2) an order barring Riffin from submitting an OFA; and/or (3) an award against Riffin and in favor of City et al of reasonable costs, including attorney's fees, for motions to compel and sanctions, attendance at hearings, and related matters. See also Denver & Rio Grande Rwy Historical Foundation - Pet for Dec. Order, F.D. 35496, served April 30, 2012, slip op. at 2 (enumerating sanctions).

This Board should dismiss Riffin from the proceeding for his discovery abuses. City et al indicated it would seek this relief if Riffin continued to default in our July 5 second motion to compel at p. 8. This relief is more than justified in light of the fact that Riffin was six years out-of-time in filing his notice of intent to OFA. Including him in the proceeding over the objection of Conrail and City et al in the first instance was contrary to uniform STB precedent. In any event, this Board has repeatedly noted that "Riffin is not a rail carrier." James Riffin- Acq. And Op. Exemption - Veneer Spur - in Baltimore County, MD, F.D. 35246, served Aug. 19, 2010; see also Norfolk Southern Ry Co. - Acq. Op. - Certain Rail Lines of the Delaware and Hudson Ry. Co., F.D. 35873, served May 15, 2015 "Riffin is not a Board-licensed rail carrier"). Riffin is not a corporation but a 73-year old individual who lacks rail operational experience. Moreover, he owns no property and has

no business interest in Jersey City. He literally has nothing to contribute to the proceeding. He evinces no support from any shipper. He certainly does not have the support of a local government or citizens' group. Finally, Riffin's track record -- not just overall but already to date in this proceeding -- indicates that no amount of "admonition" will prevent him from abusing STB procedures and jurisdiction. Riffin should be dismissed.

If Riffin is not dismissed entirely, then he should be prohibited from further pursuit of an OFA. All the same reasons for the sanction of dismissal apply for the sanction of barring him from filing an OFA. But there are additional grounds: in another recent Conrail abandonment proceeding in Jersey City, this Board disallowed a Riffin OFA attempt on the ground, inter alia, that "Riffin could not be considered a financially responsible person, as he recently filed for bankruptcy protection. ... Insolvency is inconsistent with the financial responsibility to acquire and operate a railroad under the OFDA provisions." Consolidated Rail Corp - Ab. Ex. - in Hudson County, AB 167-1190X, served May 17, 2010, slip at 5. See also Norfolk Southern Ry., Co. - Pet. Exemption - in Baltimore City and Baltimore County, MD, AB 290-311X, served Jan. 23, 2012, slip at 12 (insolvency incompatible with OFA). Moreover, Riffin has indicated that his OFA is for the illegitimate purpose of

supporting the Hyman real estate (all non-rail) interests, and/or for the equally illegitimate and even more convoluted purpose of avoiding Baltimore County land use regulation on Riffin's property in Maryland. These purposes are not consistent with this agency's prior formulations concerning the purpose of an OFA. City et al's discovery is germane to Riffin's true purposes. If he wishes to conceal those purposes by refusing to make discovery (or if he simply does not wish to be bothered beyond his two hours' effort to date), the appropriate response per this Board's regulations at a minimum is to deny him access to the OFA process. In short, Riffin should be sanctioned by disqualifying him from the OFA process as to which he obstructs discovery.

In addition, City et al move for all costs (including travel arrangements for City et al's attorney) and attorney's fees they have incurred in preparing, serving, and filing two motions to compel, and this motion for sanctions, and for attendance at a hearing in Washington, D.C.. Ironically, Riffin, in refusing to make discovery, complained in an email that counsel was billing for all the discovery efforts. Of course counsel is billing for the discovery efforts. The point, however, is that there would be no bill at all if Riffin complied. The burden - all the time and expense -- is attributable to one thing, and one thing only: Riffin's

obstructions and passive-aggressive conduct. Riffin should pay for the attorney's fees and costs of City et al for which his conduct is responsible.

So far as City et al can tell, this Board to date has admonished Riffin many times over (twice already in this case), but has never sanctioned him. This time, however, Riffin has passed a new threshold: he has arbitrarily violated an order in response to a motion to compel. At that point, Board regulations specifically provide for sanctions, including attorney's fees. City et al should not continue to be on the hook for the costs of dealing with Mr. Riffin's passive-aggressive and obstreperous conduct. That only encourages such conduct. If the Board starts to award expenses when Mr. Riffin turns the Board's processes on their head, then he will stop.

Mr. Riffin, who claimed \$23,000 in resources for an OFA at the August hearing, has sufficient funds to pay the attorney's fees and expenses set forth in the certification set forth in Exhibit K (\$18,462.29, through Sept. 8). Those fees and expenses do not include anything for the time spent by counsel trying to arrive at a compromise with the LLCs' counsel, Mr. Horgan, to obviate the need to proceed against Riffin. They also reflect counsel's heavily discounted billing rate to City et al in light of the public interest in this case and the fact

that Rails to Trails Conservancy and the Embankment Preservation Coalition are 501(c)(3) preservation organizations.

If a further hearing on this motion for sanctions is required in Washington, City et al request that it be scheduled for a date in October (thus allowing replies, if any, as well as coordination with any motion to compel that may be necessary against the Hyman interests, see note 5 supra). City et al reserve the right to amend their certification of costs and fees to date to include all additional fees and expenses associated with additional hearings or activity on the motion for sanctions.

Conclusion

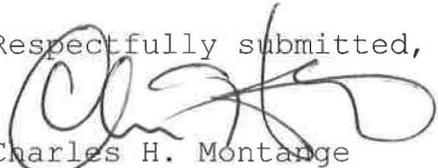
The time for bargaining on discovery is over. Riffin so declared on August 25, after he spent some portion of two hours on the matter. He breached the previous bargain he consented to, which had been entered in the form of an order, and his breach was on the very day the order was entered. He should be barred from the proceeding, or at a minimum from filing an OFA. In addition, attorney's fees and costs should be awarded against him.

If Riffin nonetheless is allowed some form of continued participation in this hearing, City et al also request an order compelling Riffin to make available his email accounts and passwords for inspection by City et al, and to supply all

documents (emails or otherwise) in his possession associated in any way with communications with the Hyman interests, and otherwise to respond fully and completely to the discovery requests in Exhibit A, no later than three business days from entry of the order. The obligation to make available responsive documents is a continuing one. If Riffin is allowed to remain in the proceeding, there should be no restrictions on his obligation to respond to the discovery already filed.

Riffin's letter to ALJ Dring, if he sent a letter circa August 25-26, 2016, must be rejected for improper service on the parties to the proceeding and as an ex parte communication dealing with substantive matters.

Respectfully submitted,



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

Attachments:

Exhibit A (document requests)
Exhibit B (Mr. Riffin's refusal to complete/City objection)
Exhibit C (Riffin says go to ALJ Dring for more response)
Exhibit D (typical email omissions of recipients, etc.)
Exhibit E (examples of deletions of original emails)
Exhibit F (pre-2015 email to Riffin from Hyman; and post-2015 email Hyman to Riffin, from another source)
Exhibit G (Riffin memo to Nagel from another source)
Exhibit H (Riffin Complaint against Forest City, excerpts)

Exhibit I (local press on Riffin lawsuit, including Riffin quotes and Sept. 12 Hyman to Riffin email)
Exhibit J (excerpts from Riffin Oct 2015 Forest City demand made available by LLCs but not Riffin)
Exhibit K (Certification of fees and expenses on Riffin discovery dispute through Sept. 8)

Certificate of Service

The undersigned hereby certifies service by depositing the foregoing for express delivery (next business day) upon Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426 and by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 15th day of September 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) [also by email]

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

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 [also by email]

James Riffin
PO Box 4044
Timonium, MD 21094 [also by email]

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, NJ 07302

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

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

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

Exhibit A
City et al's March 28
Document Requests
To James Riffin

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
Intervenors City et al to James Riffin

Pursuant to 49 C.F.R. 1114.30 and other applicable authority, intervenors 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:

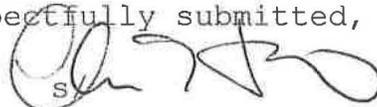
1. All documents received or possessed by Riffin or any representative of Riffin from the LLCs or any person acting on behalf of the LLCs [including but not limited to the manager of the LLCs (Mr. Steve Hyman) or attorneys for the LLCs], relating in any fashion to the Harsimus Branch, including but not 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.

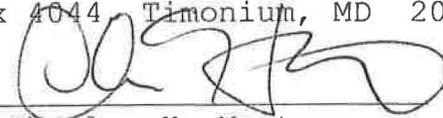
Respectfully submitted,



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

Riffin Refusal to Complete

Discovery Response (email 5:58 PM Aug 25);

first page of Riffin letter to ALJ Dring attached to email

and

City et al objection to Riffin Refusal

(email 7:00 PM Aug 25)

Subject: Re: Letter to Dring

From: C. Montange (c.montange@frontier.com)

To: jimriffin@yahoo.com; dehorgan@lawwmm.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; esstrohmeyer@yahoo.com;

Date: Thursday, August 25, 2016 7:00 PM

The "agreement" was that you would supply all emails between yourself and agents or reps of the LLCs. You have not. You have spent, by your own statement at the end of 100 emails, about two hours sending those out. This is a clerical kind of task. You have so far spent far more time (replying to motions to compel, forcing a hearing, etc.) resisting discovery than in complying. I request that you simply finish sending emails between yourself and agents of the LLCs, as our discovery requests require. And if you have documents you exchanged outside the emails, those too. I have misrepresented nothing to you. By your own statements to date, a couple more hours should do it. This is hardly burdensome given the information sought, especially for a party voluntarily participating in the proceeding over the objection of the railroad and the City, and representing at STB, the Supreme Court, and to me personally that he is doing so as a real estate play on behalf of Mr. Hyman's interests. That is an abuse of process. For what it is worth, the City has spent orders of magnitude more time responding to the LLCs repeated OPRA discovery, and I personally have had to spend far more time responding to the LLCs' discovery requests. . I think you should comply with our discovery requests. Incidentally, Nagel is a name you can type into the email search as easily as Horgan or Hyman. And I am relatively confident that a gentleman of your professed astuteness is able to recall with whom he has corresponded in connection with your machinations with or for Mr. Hyman and the LLCs in connection with the Harsimus Branch.

On Thursday, August 25, 2016 5:58 PM, jim riffin <jimriffin@yahoo.com> wrote:

The appended letter I plan to mail to Dring on Friday. You should have received 103 e-mails (by my count). They are e-mails between Riffin and: Steve Hyman, Vicki Hyman and Dan Horgan. Mr. Montange: I do not even remember who Bruce Nagel is / was. You asked for Steve, Vicki and Horgan. Are you now asking for Nagel, Fritz and the surveying folks? The library shuts down its computers in 3 minutes, so I cannot research those entities tonight. (I was lucky the library let me use their computer for 2.5 hours. The time limit is normally only one hour.) Montange's name was always listed first, so Montange definitely got everything that was forwarded. I only got one error message: re Horgan.

TO: ALJ Dring FERC 888 First Street NW Washington, DC 20426
FROM: James Riffin P.O. Box 4044 Timonium, MD 21094 (443) 414-6210
CC: Charles Montange, Daniel Horgan, Robert Jenkins
DATE: August 25, 2016
RE: Status Report and comments.

Dear ALJ Dring:

STATUS REPORT

Per my agreement with Charles Montange, a copy of the e-mails between me and Steve Hyman, Vicki Hyman, and Daniel Horgan, were forwarded to Mr. Montange on August 25, 2016, by 6:30 pm. (All 103 of them.) Likewise, the case numbers for the three bankruptcy proceedings that I participated in, were forwarded to Mr. Montange on August 25, 2016.

COMMENTS

Mr. Montange (misrepresented) to me, and to the Court, that forwarding the e-mails would be simple and would require very little of my time. I spent an hour on August 24, 2016, trying to forward the e-mails to Mr. Montange, as a 'batch.' (Which is how he said he wanted to receive them.) I learned, after an hour of trying, that Yahoo e-mails cannot be forwarded as a 'batch.' Instead, one must 'open' each individual e-mail. Once the e-mail is open, it then can be forwarded. It took me over two hours to 'open' the 103 e-mails Yahoo says have passed between me and Steve Hyman, Vicki Hyman, and Daniel Horgan, then to forward those e-mails to Mr. Montange, Daniel Horgan, Robert Jenkins, Adam Sloane and Eric Strohmeyer.

The Discovery Rules say one must make documents 'available for inspection and copying.' The Rules do not compel the document holder to do the copying for the person seeking the documents. However, it would have taken more time to litigate this 'principle,' than it took me to just e-mail them to Mr. Montange. E-mailing them, versus litigating the issue, also saved the Court a considerable amount of time.

I do apologize for being late. Normally, it takes about 75 minutes for me to drive to the STB building. I left at 7:30 am, thereby giving myself 150 minutes.

I arrived at the FERC building timely: At 9:52 am. There was no one in the 'metal detection' line. It only took about 90 seconds total time, to go through the metal detector. It took another four minutes to be issued a 'picture ID.' Since I have never been to the FERC building before, and since the hearing notice did not specify a hearing room number, I asked the security person where the hearing was being held. The security person said:

Exhibit C

Riffin Email Directing City et al to ALJ Dring

(Email 10:55 AM August 26)

Note: City et al responded to this email with an email stating, *inter alia*, that the Riffin discovery response was deficient and with a reservation of all rights.

Subject: 1189 motion to compel against Riffin

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; dehorgan@lawwmm.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; esstrohmeier@yahoo.com;

Date: Friday, August 26, 2016 10:55 AM

Per my agreement here are the three bankruptcy numbers: James Riffin: 10-11248; WMS LLC: 11-13085; BRL LLC: 11-15870.

It is my position that as of now, I have complied with all of my discovery obligations that I stipulated to.

As for 'Bruce Nagel:' I did type in 'bruce nagel' into my yahoo search engine. The response given was: Nothing found. Try the Web. So I tried the Web. There is a Bruce Nagel that is an architect. I have a vague recollection of having a telephone conversation with an architect many months ago. But it is a really vague memory. (Things that have little or no importance to me in the present, or immediate future, I quickly 'delete' from my brain's memory.)

As for Fritz Kahn: He is an attorney. I tried to hire him. Anything that passed between us is privileged.

As for the 'surveyor:' I tried to hire a surveyor, to survey the Metro Plaza parcel. His quoted fee was extremely high. After several months of no progress, I 'disengaged' him. (If I ever actually 'engaged' him.) I never actually ever met him. We had a few telephone conversations, a year or so ago.

My 'comments' to ALJ Dring were mailed 8-26-16.

Mr. Montange: If you want any more, you will have to ask ALJ Dring to order it. I have no idea who the LLCs' may have hired as 'agents.' (Other than Mr. Horgan.) Nor do I have any interest in knowing. Nor do I have any right to learn this information.

The time you have spent responding to / initiating discovery, have resulted in many 'billable hours.' I have no one to 'bill.' So there is a substantial difference between the hours you spend with this litigation, and the hours that I spend responding to your (unjustified / unreasonable) requests. But it was less time consuming to just send you the e-mails, as opposed to litigating whether I have a legal obligation to send you the e-mails. The point that I was making was: Just because you think that doing something is 'easy,' or can be quickly done, does not mean that it in fact will be 'easy.' Or even possible. And you need to be careful what you represent to a judge. Particularly ALJ Dring.

Exhibit D

General Omission of Identification of Recipient

Email, Hyman to Riffin (Riffin's name omitted) 1:20 PM
Feb 18, 2016 (almost all 100 emails like this, including all
those in this Exhibit)

Email, Hyman to Riffin 11:12 PM August 9, 2016
(unless further omissions, evidently Mr. Hyman forwarding
Documents associated with Mr. Hyman's invocation of the OFA
remedy Conrail proceeding AB 167-1036 in 1987)

Email, Hyman to Riffin 11:12 PM April 23, 2016
(providing "partial" timeline of Mr. Hyman's actions and lawsuits
dealing with Harsimus Branch against City)

Omission of Text

Email, Hyman to Riffin 1:20 PM Feb. 18, 2016

Omission of Original Email, Text, and Recipient

Email, Hyman to Riffin 11:18 AM May 1, 2016

Omission of any identification associated with an apparently
Forwarded email

Email, Hyman to Riffin 3:40 AM June 18, 2016
(identification information omitted on forwarded email)

Subject: Fw: EP 729 comments
From: jim riffin (jimriffin@yahoo.com)
To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;
Date: Thursday, August 25, 2016 2:11 PM

On Thursday, February 18, 2016 1:20 PM, Steve Hyman <shyman@shyman.net> wrote:

--
 Steve Hyman
 shyman@shyman.net

H: 212-486-9407
 C: 917-916-7838 Best Number
 F: 212-838-1909

245 East 63rd St Apt 35E
 New York, NY 10065

From: jim riffin <jimriffin@yahoo.com>
Reply-To: jim riffin <jimriffin@yahoo.com>
Date: Saturday, February 13, 2016 at 4:59 PM
To: Eric Strohmeyer <esstrohmeyer@yahoo.com>, Steve Hyman <shyman@shyman.net>, Daniel Horgan <dehorgan@lawwmm.com>
Subject: EP 729 comments

My comments re new OFA rules

Attachments

- STB EP 729 JR-1 Comments 2-12-16.pdf (155.82KB)

Subject: Fw: Emailing - JCRA ICC ABANDONMENT AB167 sub
From: jim riffin (jimriffin@yahoo.com)
To: c.montange@frontier.com; rmjenkins@mayerbrown.cor
Date: Thursday, August 25, 2016 1:41 PM

On Tuesday, August 9, 2016 11:12 PM, Steve Hyman <shyman@

--

Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Attachments

- JCRA ICC ABANDONMENT AB167 sub 1036.pdf

COMMISSIONERS

JOSEPH CARDWELL
CHAIRMAN

SILVANA KAMINSKI
VICE CHAIRMAN

STEPHEN ASTOLFI

MICHAEL J. MARINO

THOMAS McCANN

WENDY PEREZ

STEVEN R. ROSS

Certified - R.R.R.



JERSEY CITY REDEVELOPMENT AGENCY

3000 KENNEDY BLVD. • JERSEY CITY, N.J. 07306-3887

OLDFIELD 6-0517

March 27, 1987

EXECUTIVE

JEROME M. KILLEEN
EXECUTIVE DIRECTOR

GEORGE R. ALLEN, Esq.
GENERAL COUNSEL

ANTHONY R. CUCCI
MAYOR

Ms. Noreta R. McGee, Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

RE: AB167 sub 1036

Dear Madam Secretary:

It has come to our attention that Mr. Steven Hyman has filed initial papers in order to acquire the former Edgewater branch of the Lehigh Valley Railroad, now a Conrail-owned property. This line runs through and in proximity of the Liberty Harbor North Development Parcels 3-4 and 5 a Project Area of the Jersey City Redevelopment Agency for which a developer was designated on February 5, 1987 and March 21, 1985, respectively. These areas, combined, are approximately eighty (80) acres of land and were declared blighted in 1972 by the Municipal Council of the City of Jersey City, New Jersey.

Mr. Hyman made a proposal to the Agency on Parcels 3-4, but his proposal and development team was not chosen by the Jersey City Redevelopment Agency. It is our opinion that Mr. Hyman's attempted acquisition of the Edgewater Branch is for the purpose of obtaining leverage for his development intentions in that area and to interfere with the mixed-use development project slated for Parcels 3 and 4 (comprising 55 acres) and the proposed new Jersey City Medical Center, a new 340 bed hospital to be constructed on Parcel 5 and which will replace the obsolete facilities now in existence elsewhere.

We also object to the sale of the line and the continued classification of this property as operable due to the fact that same has been inactive for years. The area wherein the line is located is mostly vacant save for a few manufacturing concerns which have not relied upon rail service for years. Conrail has, as you know, filed a petition for abandonment on the basis of its determination and finding of insufficient revenues in relation to the continued operation of the line. The Jersey City Redevelopment Agency intends to acquire the industrial concerns and all of the acreage involved in both projects through Eminent Domain so that the development projects can proceed in all due course. All existing non-conforming land uses which conflict with the Liberty Harbor North Redevelopment Plan's land use controls (the prevailing zoning ordinance in Parcels 3-4 and 5) are to be eliminated through the implementation of the above described projects by the Jersey City Redevelopment Agency. This further makes continuance of the Edgewater Branch and preservation of its Right-of-Way contrary to public policy and detrimental to the public good.

Ms. Noreta, R. McGee, Secretary
March 27, 1987
Page #2

In summary, I must reiterate our position objecting to the acquisition of the rail line by Mr. Hyman and any delay in its abandonment as initiated by Consolidated Rail Corporation as there is no need for a line in the area and it would only serve to hamper the development interests of the City of Jersey City. It is apparent to the Jersey City Redevelopment Agency that Mr. Hyman and his various business enterprises have no dependence upon rail service and that there is no intention on their part to operate the Edgewater Branch as a short line carrier. It is our belief that there is no justifiable cause for the Interstate Commerce Commission to grant Mr. Hyman the status of an approved common carrier.

If you should have any questions with regard to this matter, please do not hesitate to contact me.

Sincerely,


for JEROME M. KILLEEN
Executive Director

JMK/PWH/baa

cc: Mayor Anthony R. Cucci
Steven Hyman

Subject: Fw: Emailing - JCRA ICC ABANDONMENT AB167 sub 1036.pdf

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeier@yahoo.com;

Date: Thursday, August 25, 2016 1:41 PM

On Tuesday, August 9, 2016 11:12 PM, Steve Hyman <shyman@shyman.net> wrote:

--

Steve Hyman
shyman@shyman.net

H: 212-486-9407

C: 917-916-7838 Best Number

F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Attachments

- JCRA ICC ABANDONMENT AB167 sub 1036.pdf (275.81KB)

Subject: Fw: Embankment Time Line till 2015 cases to follow in detail
From: jim riffin (jimriffin@yahoo.com)
To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com;
dehorgan@lawwmm.com; esstrohmeier@yahoo.com;
Date: Thursday, August 25, 2016 1:50 PM

On Saturday, April 23, 2016 11:12 PM, Steve Hyman <shyman@shyman.net> wrote:

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Attachments

- 2016_04_23_23_07_18 Nancy Platkin partial timeline.pdf (11.22MB)

LISA'S NOTES

| DATE | ACTION |
|------------|---|
| 1902 | Pennsylvania Rail Road builds 6-block long embankment on 6th Street, through a Jersey City residential neighborhood, for coal driven freight trains. |
| 1996 | JCRA encourages Consolidated Railroad Corporation (Conrail) to remove steel girder bridges connecting each block of the 6th Street Embankment as the rail line is no longer active and trucks are unable to pass under the bridges. |
| 1996 | Embankment Coalition forms and brings suit against Jersey City and Mayor Brett Shundler to prevent the demolition of the 6th Street Embankment walls. |
| 1998 | Jersey City submits application to Green Acres for 9 acres of open space. Shundler plans for the remaining 4 acres to be used for recreational fields. Proposes first new park in Jersey City in 50 years. (IS THIS THE EMBANKMENT PROPERTY?) |
| 1999 | Embankment walls zoned historic under NJ state registration. |
| 2003 | Jersey City designates 6th St. Embankment property Historic Landmark Status. |
| 2003 | Hyman makes first offer to Conrail. Puts down a deposit to have first option to title. |
| 2004 | Jack Curley, Esq. starts condemnation case for Jersey City Redevelopment Agency (JCRA). |
| 2004-02 | [Feb] Embankment Coalition receives grant from Conservation Foundation matching NY/NJ Baykeeper funds to hire Embankment consultant Andrew Strauss. Strauss says rail line is a line, not a spur as Conrail attests. |
| 2004-03 | [March] Hyman offers rights to title of 6th St. embankment to Jersey City for Flintkote property abatement. Tax abatement for Flintkote was voted down 7-1. *The Jersey Journal: Monday, June 13, 2005, "Nod for Sixth St. brings green space Downtown." |
| 2004-03 | [March] City passes on option to purchase embankment for Flintkote abatement. |
| 2004 | Hyman purchases first option to purchase 6th Street Embankment after entering a deferred contract in 2003. |
| 2004-06 | City Council passes ordinances approving eminent domain to acquire embankment property |
| 2004-09 | City Council passes ordinances approving eminent domain to acquire embankment property |
| 2004-09 | Flintkote abatement passes by a 4-3 vote. |
| 2005-03-12 | Jersey City Council and Mayor Cunningham vote to use eminent domain/condemnation to seize 6th St. Embankment. Council votes 8-0-1 to buy property Hyman's first option contract. This is four administrations after Embankment Coalition started motion to intervene. Litigation between Jersey City and the LLCs begins. |
| 2005-03-16 | Mayor Cunningham, Conrail and the Embankment Coalition meet for the Mayor to announce Green Acres' commitment to help City apply for and receive funding of a 75% grant and 25% loan to acquire Embankment. |
| 2005-07 | Corzine and Lautenberg (Senators) earmark \$1.6 million of the transportation infrastructure bill for embankment. SAFETEA-21 |
| 2005-06 | East Coast Greenway Alliance announces the six block, half mile parcel would be part of a 2600 mile bike and walking trail stretching from Maine to Florida. |
| 2005-07-29 | City officials confirm Hyman purchased Embankment on July 12th at public auction for \$3 million through several corporate entities. *Jersey Journal: Saturday, July 30, 2005, "Embankment Sold." |
| 2005-08 | Jastrzebski and LLCs file application to subdivide two lots at western end of Embankment property for residential development. |
| 2005-08 | Assemblyman Louis Manzo proposes position of sale due to Conrail's failure to notify the federal Surface Transportation Board before selling to Hyman and LLCs. Law requires railroad companies to officially abandon property. Law also requires that railroads give public officials 180 |

| | |
|------------|---|
| | ways to purchase property after private offer. Conrail insists the Embankment railway is a spur and not a line and is exempt to these laws. *The Jersey Journal: Monday, August 29, 2005, "IN OUR OPINION: Do what it takes to get embankment." |
| 2005-08 | Jersey City Council proposes to give \$20,000 to Seattle based lawyer, railroad specialist, Charles Montange on bequest of the embankment Coalition. *The Jersey City Reporter, October 2, 2005, "It's not easy being green." |
| 2005-09 | September JC City Council votes \$20K expenditure to hire Charles Montange as recommended by Embankment Coalition to examine legality of sale to Hyman/LLCs. Jersey Journal Sept 30, 2005 "Jersey City's investing 20K in Embankment Hopes." |
| 2005 | LLCs' architect, Dean Marchetto, wins Smart Design Award from State of NJ for Embankment project. |
| 2006-01 | OPRA Request |
| 2007-03 | City Council votes 4-3 against approving a resolution authorizing the JC Council to file for a loan with the NJ Environmental Infrastructure Trust for \$4.9 million to assist in acquisition of Sixth Street Embankment property. Conditions of loan would have been \$4.9 million with 75% at no interest and 25% at 1% interest to be paid off over 20 years. "No to Nearly \$5 Million" March 18, 2007, The Hudson Reporter. |
| 2007 | MOU |
| 2008-04 | LLCs offer Jersey City all 8 blocks of the Embankment property for \$10 million (the amount a 2006 City appraisal estimated the property's worth) plus tax abatements and a change of zoning for a 20 acre area near the NJ Turnpike also owned by the LLCs. "Making 'Bank," Jersey Journal, April 3, 2008. |
| 2008 | Spring? LLCs apply to JC HPC for "Certificates of Economic Hardship." |
| 2009-04-15 | LLCs and Marchetto draw up plans for 12 multi million dollar houses on top of 6th Street Embankment from Marin Blvd to Brunswick St. 96% of the wall is left intact. 60/1000 ft on each wall. \$5 million per house. |
| 2009-04 | Trespassers set fire at Marin Blvd. Weeks later, Police and Fire Dept respond as chunks of Embankment wall in a section west of Erie St topple. Area is cordoned to protect pedestrians. |
| 2009-05 | Application to JC HPC denied. |
| 2009-05 | City offers LLCs \$7.6 million for the Embankment property in its entirety. |
| 2009-08-24 | JJ Article "Jersey City's 4-Year Battle on Embankment: too long, costly?" According to City officials, JC has spent \$322,427 in fees on outside attorneys to obtain Embankment property. |
| 2010-06 | JC Council votes 6-1-2 to introduce up to \$7.7 million bond ordinance to buy Embankment. In |
| 2010-07 | July, City issues \$7.65 million bond ordinance to buy Embankment. |
| 2010-08 | GRC denies OPRA release of documents deemed as attorney client privileged. |
| 2010-11-24 | City Council votes to hire former NJ Supreme Court Chief Justice James Zazzali to mediate over 6th St Embankment. Justice is paid \$580 p/h for approximately 40 hours: \$25K. Costs are split between LLCs, Conrail and City. |
| 2011-05 | JC Council rejects settlement proposed by LLCs. Proposed settlement sold 2 blocks of Embankment Property to JC for \$10 million for park use only. Remaining Parcels would have development rights without restrictions or historic preservation issues. The City would waive all filing fees, escrows, construction fees and or any other fees connected to demolition, remediation, construction and development of the Embankment property. In addition, LLCs would acquire adjacent Conrail parcels located under the NJ Turnpike and request that no residential multi unit project within Ward E would receive a long-term tax abatement. Councilman Steve Fulop calls it "not even reasonable." *JJ Article May 11, 2011 |
| 2012-02 | DC Circuit Court of Appeals reverses lower court decision and rules City and Community Groups may go forward to pursue ownership of Embankment. |

| | |
|--------------------|---|
| 2012 | New Jersey Law Journal, August 27, Jersey City has expended \$500,000 in legal fees litigating the STB aspect in Federal Court in D.C. and OPRA, land use and civil rights issues in state court." |
| 2012-02 2012-03 | Settlement proposed by LLCs: JC to pay \$7 million for LLCs to relinquish the property TK; Conrail to pay \$13 to settle all pending legal battles around the sale. Settlement gets Council approval. JC and LLCs sign settlement deal. Settlement fails as Conrail chooses to not commit to its part in the deal.. |
| 2012-03 | As part of a tentative settlement with the LLCs, JC City Council gives initial approval to changes of the Downtown redevelopment plan that would permit the construction of two towers on a portion of the Sixth Street Embankment property. Changes to the development plan are tentative to all parties signing the settlement. |
| 2012-08 | Court rules Jersey City must turn over documents previously being held under claims of attorney client privilege in LLCs OPRA request. |
| 2013-01 | Chicago Title ordered to pay \$1.65 million in legal fees and costs in dispute over ownership of Embankment Property. |
| 2013-09-30 | Line not spur ruling |
| 2014-02-21 | LLCs appeal to Federal Gov't rejected. Appellate judges in Washington DC uphold District Court ruling saying sale if 6thStreet sale is invalid and subject to laws that require JC first option to purchase the property. |
| 2014-10 | NJ Economic Development Authority awards JC \$5 Million in State funds for Berry Park for ball fields, courts, plantings, landscaping, paths and amenities. |
| UNKNOWN | City is Utilizing \$1.3 Million of Green Acre funding to acquire land for Berry Park. Proposed completion is 2015 according to JC Officials. JJ Oct 24. 2014 "JC Gets \$5 Million in state funds for Berry Lane Park" |
| 2014-11 | Sarkisian rules JC and EC in compliance with OPRA request. LLCs lose appeal. |
| UNKNOWN | Hudson Yards Development: 26 acre mixed use development btw 10th and 12th aves from 30th to 33rd sts. 14 acres of open space. |
| 2004 | Zoning changes to neighborhood in 2004 to allow dor 5,500 units of housing along highline all but 1,100 of the 5,500 units of new housing development are for high income residents. |

The 6th Street Embankment Vertical Timeline

For a list of all Embankment Docket #'s click [HERE](#)

SORT BY:
 DATE: (Asc.) / (Desc.)
 DOCKET#: (A-Z) / (Z-A)

| DATE | DOCKET # | ACTION | MISC |
|-------------------------------------|-------------------------------|---|--|
| 10/01/02 (Specific Date Unknown) | HUD-L-4683-05 | LLC's (plaintiffs) vs. JC, Planning Board and HPC | |
| 01/26/05 | AB-167-1189-X | Reply | Consolidated Rail Corporation |
| 05/01/05 (Specific Date Unknown) | HUD-L-5037-05 | JC (plaintiff) vs. LLC's and Planning Board (defendants) The City adopted an ordinance authorizing acquisition of the Embankment for park use. | |
| 09/14/05 | HUD-L-4683-05 | Complaint | 212 Marin Bo |
| 09/21/05 | HUD-L-4883-06 | The LLC et al. obtained a ruling from the zoning officer dated Sept 21, 2005 that the Marin and Manila blocks of the Embankment were located in a residential zone. The property owners filed separate applications for subdivision and site plan approval. 161 days after the ruling of the zoning officer, Barbara A. Netchert, the newly appointed Director of Department of Housing, Economic Development and Commerce, ruled that the zoning of the parcels is governed by older redevelopment plans that restrict use to railroad use, preventing the applications from proceeding. | |
| 09/30/05 | HUD-L-4908-05 | Complaint | 212 Marin Bo |
| 09/30/05 | HUD-L-4908-05 | Order to Show Cause HR | 247 Manila A |
| 10/03/05 | HUD-L-4908-05 | <u>Order to Show Cause for Preliminary Injunctive Relief</u> | |
| 10/04/05 | HUD-L-5037-05 | <u>Petition for Order of Preliminary Entry Pursuant to N.J.S.A. 20:3-16</u> | Mun of Jersey City |
| 10/04/05 | HUD-L-5037-05 | <u>Order to Show Cause</u> | |
| 10/21/05 | HUD-L-5037-05 | <u>Order for Preliminary Entry Pursuant to N.J.S.A. 20:3-16</u> | Mun of Jersey City |
| 10/27/05 | HUD-L-4908-05 | Answer | Planning Bd |
| 11/10/05 | HUD-L-4908-05 | Appearance | 212 Marin Bo |
| 11/15/05 | HUD-L-4908-05 | Order to Show Cause | 212 Marin Bo |
| 11/18/05 | HUD-L-4683-05 | Mot Prt Sum Jdg | 212 Marin Bo |
| 11/28/05 | HUD-L-4908-05 | <u>Order Remanding Application to the Planning Board and Imposing Restraints</u> | |
| 12/14/05 | HUD-L-4683-05 | Proof of Service | City of Jers |
| 12/20/05 | HUD-L-4683-05 | Answer | City of Jers |
| 12/20/05 | HUD-L-4683-05 | Stipulation Extending Time to Answer | JC Historic |
| 12/20/05 | HUD-L-4908-05 | Stipulation Extending Time to Answer | City of Jers |
| 12/20/05 | HUD-L-4908-05 | Ans Cntr & 3 rd | City of Jers |
| 01/04/06 | HUD-L-4908-05 | Misc Sub Atty | Planning Bd |
| 01/12/06 | FD-34818 | <u>Petition for Declaratory Order</u> | Rails To Trails Conservancy |
| 01/18/06 | HUD-L-4908-05 | Summons | Consolidated |
| 01/23/06 | FD-34818 | <u>Petition to Intervene</u> | 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, And 446 Newark Avenue, Llc |

remainder of document omitted to save duplicating costs

Subject: Fw: Title 48

From: jim riffin (jimriffin@yahoo.com)

To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com;
dehorgan@lawwmm.com; esstrohmeier@yahoo.com;

Date: Thursday, August 25, 2016 1:49 PM

On Sunday, May 1, 2016 11:18 AM, Steve Hyman <shyman@shyman.net> wrote:

Might be the answer.

Steve Hyman

Subject: Fw: RR abandonment
From: jim riffin (jimriffin@yahoo.com)
To: c.montange@frontier.com; rmjenkins@mayerbrown.com; asloane@mayerbrown.com; dehorgan@lawwmm.com; esstrohmeyer@yahoo.com;
Date: Thursday, August 25, 2016 1:44 PM

On Saturday, June 18, 2016 3:40 AM, Steve Hyman <shyman@shyman.net> wrote:

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Date: Friday, June 17, 2016 at 6:30 PM
To: Steve Hyman <shyman@shyman.net>
Subject: RR abandonment

Steve, I am recovering nicely from triple bypass surgery and am getting back into the abandonment game. A NARPO member from Indiana has raised a question about Conrail abandonments that has got me investigating the Conrail abandonment issue. Was your abandonment done under the Conrail Section 308 NERSA laws? Can you give me a cite of the STB/ICC abandonment application? I have been reading case law on Conrail Section 308 abandonments, and if your was one of those, then your attorneys have missed a huge loophole in the federal laws. Section 308 says that the ICC/STB cannot deny a Conrail abandonment except for an offer of financial assistance and also a 3rd Circuit court case says that trail use cannot be imposed by the ICC/STB as the wording of Section 308 does not allow anything except an offer of financial assistance.

Your thoughts.

Exhibit E

Examples of Deletion of Original Email

To Which Email supplied by Riffin is Responding

Email: Vickie Hyman to Riffin, 6:39 PM Nov. 14, 2015

(Mrs. Hyman appearing to provide research assistance to Mr. Riffin but original request Riffin to Mrs. Hyman omitted)

Email: Vickie Hyman to Riffin, 8:46 PM May 31, 2016

(similar)

Email: Steve Hyman to [apparently] Riffin, 12:08 AM May 15

(Mr. Hyman offers "to go to Manville" with Riffin and asks about decision at STB)

Note: at the bottom of the page sent by Riffin containing the foregoing email is a rare instance in which Riffin provides an email (Riffin to Strohmeier, Hyman and Kahn, 6:37 PM May 14) he sent to Mr. Hyman and others but improperly omits the text or attachments from the email. Riffin basically provided no emails which he sent to the Hyman interests.

Fw: try this

Subject: Fw: try this

From: jim riffin <jimriffin@yahoo.com>

Date: 8/25/2016 2:55 PM

To: "C. Montange" <c.montange@frontier.com>, "Jenkins, Robert M." <RMJenkins@mayerbrown.com>, "Sloane, Adam C." <ASloane@mayerbrown.com>, Daniel Horgan <dehorgan@lawwmm.com>, Eric Strohmeyer <esstrohmeyer@yahoo.com>

On Saturday, November 14, 2015 6:39 PM, Vickie Hyman <vickie@shyman.net> wrote:

Go to:

<http://mapmaker.rutgers.edu/>

the click on Historical Maps of New Jersey

then click on New Jersey Historical maps and Air Photo Portal

THEY MAY HAVE WHAT YOU ARE LOOKING FOR

Good luck, Vickie

Fw: Nancy Beiter

Subject: Fw: Nancy Beiter

From: jim riffin <jimriffin@yahoo.com>

Date: 8/25/2016 2:53 PM

To: "C. Montange" <c.montange@frontier.com>, "Jenkins, Robert M." <RMJenkins@mayerbrown.com>, "Sloane, Adam C." <ASloane@mayerbrown.com>, Daniel Horgan <dehorgan@lawwmm.com>, Eric Strohmeyer <esstrohmeyer@yahoo.com>

On Tuesday, May 31, 2016 8:46 PM, Vickie Hyman <vickie@shyman.net> wrote:

Nancy R. Beiter, Esq
603-532-7225

Fw: JR-11 supp to motion to stay

Subject: Fw: JR-11 supp to motion to stay

From: jim riffin <jimriffin@yahoo.com>

Date: 8/25/2016 2:42 PM

To: "C. Montange" <c.montange@frontier.com>, "Jenkins, Robert M."

<RMJenkins@mayerbrown.com>, "Sloane, Adam C." <ASloane@mayerbrown.com>, Daniel

Horgan <dehorgan@lawwmm.com>, Eric Strohmeyer <esstrohmeyer@yahoo.com>

On Friday, May 15, 2015 12:08 AM, Steve Hyman <shyman@shyman.net> wrote:

Jim,

Crazy week. I will be glad to go to Manville with you and discuss other possibilities. What was your decision at the STB?

Steve

Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

From: jim riffin <jimriffin@yahoo.com>

Reply-To: jim riffin <jimriffin@yahoo.com>

Date: Thursday, May 14, 2015 at 6:37 PM

To: Eric Strohmeyer <esstrohmeyer@yahoo.com>, Steve Hyman <Shyman@shyman.net>, "Fritz R. Kahn" <xiccg@gmail.com>

Subject: JR-11 supp to motion to stay

Exhibit F

Emails forwarded by CNJ Rail pursuant to discovery
But not by Riffin

1. 2014 emails Hyman to Riffin, with attachment
Attachment: Memo, F. Kahn to S. Hymann et al, Nov. 25, 2005,
Alternative STB Scenarios

2. Email, Hyman to Riffin, 11:30 AM March 19, 2016

Discussing Strategies to Defeat City, including an
Attachment dated March 16, 2016, entitled Strategic Review
Of similar character

Note: Any claim of privilege to these documents is waived
because Mr. Hyman provided same to (among others) Riffin, who is
an outside party and not his attorney.

Subject: Fw: Fritz Kahn 2005 Hyman Railroad etc
From: Eric Strohmeyer (cnjrail@yahoo.com)
To: c.montange@frontier.com;
Date: Thursday, September 11, 2014 1:17 PM

This will be scanned into PDF format.

Eric

On Saturday, June 21, 2014 2:39 PM, Eric Strohmeyer <cnjrail@yahoo.com> wrote:

Jim, download and review the attached document file. It is in Microsoft word format.

On Friday, January 17, 2014 9:49 PM, Steve Hyman <shyman@shyman.net> wrote:

Attachments

- hymanthree.doc (30.00KB)

MEMORANDUM

To: Mr. Steve Hyman, Ed McKirdy, Esq., Jeff Lewis, Esq.
From: Fritz R. Kahn
Subj.: Alternative STB scenarios
Date: November 25, 2005

This is to memorialize the substance of our telephone conference call of last Wednesday, November 23, 2005, during the course of which we explored several alternative scenarios to be pursued before the Surface Transportation Board of the U.S. Department of Transportation.

I noted that Jersey City had engaged Charles H. Montange, Esq., a Seattle lawyer who is special counsel to the National Trails Conservancy and is principally engaged in securing abandoned railroad rights-of-way for cities or other bodies which wish to use them for hiking or biking trails under the National Trails System Act, 16 U.S.C. 1247(d). I, therefore, thought that it was likely that he shortly would bring a proceeding before the STB to have Conrail's sale of the 6th Street property to Steve invalidated. He would contend that the Harsimus Branch was a line of railroad which had not been authorized by the STB or the predecessor agency, the Interstate Commerce Commission, to be abandoned by Conrail, and, accordingly, the line or any portion of it could not be sold to Steve without the advance approval of the STB. For regulatory purposes, the Harsimus Branch remains an active line of railroad.

I thought that would be fine, because it would enable Steve to respond that Jersey City does not come to the STB with clean hands, having dealt with the Harsimus Branch

as if it had been abandoned by allowing the commercial and residential development of the Harsimus Cove area and the construction of the Newport Centre Mall and requiring the removal of the bridges over the side streets, such as Coles Street. Moreover, we would contend, depending upon the milepost designations of the quitclaim deed by which Conrail sold the 6th Street property to Steve, that the segment did not lie between Milepost 1.0 and Milepost 7.0 and, hence, was not a railroad line to be operated by Conrail as part of the Final System Plan. The segment was abandoned by virtue of the Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985. The segment was conveyed to Steve as ordinary realty. If, however, the segment did lie between Milepost 1.0 and Milepost 7.0, we would need to argue, as John Fiorilla, Esq., Conrail's counsel, evidently believes, that the Harsimus Branch, at least after 1920, when the ICC first was vested with abandonment authority, was a spur and not a railroad line, and, pursuant to 49 U.S.C. 10906 and its predecessor provisions, no STB or ICC authorization was required for a spur abandonment. Conrail had abandoned the spur and, hence, properly could transfer the segment as ordinary realty to Steve. I think that might be a difficult argument to sustain, as the Harsimus Branch evidently remained an active line of railroad after 1920. In the alternative, we could argue that there was a *de facto* abandonment of the Harsimus Branch. As I previously have indicated, however, the STB does not recognize *de facto* abandonments and maintains that a railroad line is not abandoned until it has been authorized by the agency to be abandoned.

Of course, if the sale of the 6th Street property to Jay were invalid, as Jersey City would contend, then Conrail would remain the owner of an active railroad line, and Jersey City would be foreclosed from seeking to condemn the property.

Steve didn't much like my approach and thought it might be wiser to take the initiative and have a newly established corporation, let's say, Hyman Railroad, Inc., file a seven-day section-10901 class exemption notice, pursuant to 49 C.F.R. 1150.31, thereby becoming a railroad subject to STB jurisdiction. Again, as I have indicated previously, the STB welcomes *mea culpa* pleadings, and, while it might criticize Jay for not having made a timely filing when it purchased the 6th Street property, it is likely to allow the exemption to become effective.

Of course, Jersey City would be foreclosed from bring a condemnation action against Hyman Railroad, Inc., as it would be from bringing one against Conrail, if Conrail continued to be the owner of an active line of railroad. If it sought the property, Jersey City first would need to prosecute a so-called adverse abandonment application before the STB against either Conrail or Hyman Railroad, Inc., as the case may be, contending that there is an overriding public interest in preserving the Embankment. Jersey City's adverse abandonment application would be unlike any other ever brought before the STB, because there are no railroad operations being rendered on the 6th Street property and no shippers would be denied railroad service if the adverse abandonment application were granted. In the circumstances, the STB is likely to grant the application, stating that it will not allow its jurisdiction to be exploited to avoid the condemnation action that Jersey City is prepared to bring.

At such time as Hyman Railroad, Inc., itself determined that it wished to abandon the 6th Street property, it would need to file a Petition for Exemption, pursuant to 49 U.S.C. 10502 and 49 C.F.R.1121.1, et seq. , to be relieved of the formalities of an abandonment application filed pursuant to 49 U.S.C. 10903 and 49 C.F.R. 1152.1, et seq.

The Petition is certain to be granted, because there are no railroad operations being rendered on the property, and no shippers would be denied service. The process would take five to six months.

As we discussed, in authorizing an abandonment, the STB can impose a trails condition, pursuant to 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29, or a public use condition, pursuant to 49 U.S.C. 10905 and 49 C.F.R. 1152.28, but they can be rejected at the discretion of the abandoning railroad. Neither condition can be enforced by the STB against the wishes of the abandoning railroad. Additionally, the STB, also, can allow a financially responsible person, including Jersey City, to purchase the property, pursuant to 49 U.S.C. 10904 and 49 C.F.R. 1152.27. In case the parties cannot agree upon the purchase price, the STB is empowered to set it. The price is not binding upon the purchaser; it, however, is binding upon the abandoning railroad. The so-called OFA process can only be used to continue freight operations on an active line of railroad, and cannot be employed as a subterfuge to obtain the right-of-way for some other purpose, such as a hiking or biking trail. Thus, Jersey City cannot hope to acquire the property through the OFA process.

Steve asked if there weren't another way to bring the matter before the STB. Of course, the STB, pursuant to section 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), has the discretion to institute a declaratory order proceeding to terminate a controversy, as the one between Jersey City and Steve. Steve could file a petition with the STB requesting it to institute such a proceeding. Steve asked how long it would take until a decision were rendered in a declaratory order proceeding, and I replied that it might take six month, a year or two years.

After we got off the phone, I thought of a preferable way to proceed, one that would allow Steve to take the initiative, and one that would keep Conrail happy. And that would be for Steve to file the seven-day section-10901 exemption notice, establishing Hyman Railroad, Inc., and concurrently file a Motion to Dismiss on the ground that no authority was required for Steve to acquire the 6th Street property. Of course, we would need to make one or more of the same arguments I previously discussed, namely, if the milepost designations permit, that the segment purchased by Steve was not conveyed to Conrail as an active line of railroad but had been abandoned pursuant to the provisions of the 3R Act. Alternatively, we would contend that the segment purchased by Steve was not of an active railroad line, because Jersey City's actions occasioned a *de facto* abandonment of the property, regardless of whether it was a railroad line or a spur.

If the quitclaim deed by which Conrail sold the 6th Street property to Steve showed the segment Steve purchased to lie somewhere between Milepost 0.0 and Milepost 1.0, we're home free. If, however, it lies between Milepost 1.0 and Milepost 7.0, then we would be dealing with a line of railroad conveyed to Conrail pursuant to the Final System Plan, and we would need to prove the abandonment of the segment purchased by Steve. The quitclaim deed did not include the segment's milepost designations, we have to try to get a look at a Valuation Map of The United New Jersey Railroad and Canal Company. Certainly, John Fiorilla can get a copy, and there may be one in the Archives of the New Jersey Secretary of State. I'm making an inquiry whether it has a copy.

Subject: FW: LLC Litigation
From: Steve Hyman (shyman@shyman.net)
To: jimriffin@yahoo.com;
Date: Saturday, March 19, 2016 11:30 AM

--
Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

From: "Morsella, Patti" <pattim@lawwmm.com> on behalf of "McPherson, Sr., Kenneth" <kdm@lawwmm.com>
Date: Friday, March 18, 2016 at 10:44 AM
To: Steve Hyman <shyman@shyman.net>
Cc: "calampi@alampi-law.com" <calampi@alampi-law.com>, "Horgan, Daniel" <dehorgan@lawwmm.com>
Subject: LLC Litigation

Steve –

Attached is an updated presentation on the Pending and Proposed Litigation so that you can see where we are now, at the middle of March. We have followed on the track last laid out in our February meeting and as presented in a similar presentation of February 11, 2016.

In that interim period we have made progress. That, with developments soon to come as noted in the presentation, should provide us with additional funds in hand, and additional advantages against the City. We have not heard from Conrail, as Broder promised (no surprise), on its decision on redeeming the NZ Funding tax lien on its Lot 120 property. We and you have also spoken to Keith Bonche who will begin the foreclosure on behalf of NZ Funding, in coordination with us so that you get all of the potential advantages, as well as the money. This action may, depending on what the City does in response, hold the possibility of defeating the city on its claims under Title 48. NJSA 48:12-125.1; something you had long sought in order to lift the stay on the civil rights litigation.

The three pending state court matters, individually and collectively, are designed to thwart the City's plans to acquire the property through any STB action, and to establish a basis to cut off its financing for its STB activities. Of course, if the City's OFA ordinance is invalidated, for a second time, that should be very helpful in advancing resolution of the STB process.

Subsequent to receiving the results and outcomes of these three cases over the coming months, additional possibilities may be forthcoming to thwart the City's efforts to further delay the STB proceedings, and to avoid having to face the civil rights litigation by the LLCs. Also noted in the outline is the potential for bringing claims against Conrail.

The months of January and February have been quite demanding. You can discern this from the attached presentation and from the invoice statements for each of those two months which we are concurrently sending to you. We had advised you of our confidence in our recommended approaches and, for that reason, among others, have not charged for the March 2, 2016 all-day meeting with the STB in Washington, DC, attended by Dan Horgan and Eric McCullough. Nonetheless, we have devoted substantial time and effort in these complex matters and need to resolve our fee arrangement. The current two months of invoices are based on our current agreement that has not been changed. We would like to work with you to arrive at an acceptable accommodation on fees, but we cannot do that by ourselves. Let's meet with you and Carmine to meet and discuss this further as soon as possible.

Thanks,

Ken

Attachments

- LLC Litigation Overview 3 2016.pdf (68.69KB)

Confidential Attorney-Client Communication and Attorney Work Product

Pending & Proposed Litigation

Embankment Limited Liability Companies & NZ Funding

Strategic Review

March 16, 2016

remainder of document omitted to save duplicating costs

Exhibit G

Email: Riffin to Strohmeyer 10:21 PM Nov. 21, 2015
Stating Hyman had discussed Riffin to Nagel memo
With Nagel

Riffin to Nagel memo (dated 21 Nov. 2015)

Subject: Fw: letter to bruce nagel
From: Eric Strohmeier (esstrohmeier@yahoo.com)
To: c.montange@frontier.com;
Date: Monday, June 13, 2016 2:53 PM

This this the email I called you about.

Eric

On Saturday, November 21, 2015 10:21 PM, jim riffin <jimriffin@yahoo.com> wrote:

Hyman talked to Nagel today. He has some interest. This is what I sent to him.

Attachments

- STB NJ AB 167 1189 L-1 to Nagel 11-21-15.pdf (103.64KB)

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

TO: Bruce Nagel Nagel Rice 103 Eisenhower Parkway Roseland, NJ 07068
Bnagel@naglerice.com (973) 18-0400

DATE: Saturday November 21, 2015

RE: Steve Hyman's Embankment properties.

Hudson Exchange West [Metro Plaza] Property bounded by Marin Blvd on the West, 2nd Street on the South, Light Rail on the East, Gangemi (6th St) on the North.
Bought by / owned by: **Gregg Wasser** G& S Investors.
Being developed by: **Forest City Ratner** Companies of NY, NY.

ULTIMATE GOAL: Persuade Conrail to negotiate a settlement with Steve Hyman, Jersey City, Riffin and Wasser / Forest City.

PATH TO GOAL: Enjoin Wasser / Forest City from development of the Metro Plaza property. Wasser / FC sue Conrail for \$800 million. I agree to lift injunction, providing Conrail negotiates an acceptable settlement.

ACCEPTABLE Settlement: **Conrail** deeds to Hyman the 12 acres +/- West / North of Newark Avenue. Conrail gives Hyman \$5 million in cash. Conrail gives Riffin: The segment of the Harsimus from Marion Junction (1/2 mile west of Journal Square) to where the Harsimus leaves the PATH r/w; The Harsimus rr easement from Waldo Street to the Light Rail line; The D&H's Terminal Rights at Oak Island; Use of the Bayonne Industrial Track; Trackage rights from Jersey City to: Lakehurst, NJ, Manville, NJ, Oak Island Terminal, Bound Brook, NJ. Norfolk Southern gives Riffin trackage rights to Scranton, PA. CSX gives Riffin trackage rights to Belle Mead, NJ. Conrail, NS, CSX, give Riffin some surplus locomotives, open hopper and covered hopper cars, LP tank cars.

Jersey City grants development rights on the Embankment and Conrail's 12 acres

Hyman grants to Jersey City 3 Embankment tops, for park purposes.

Hyman gets a percentage interest in the Embankment / Conrail's 12 acres development.

Forest City gets to be the developer for the Embankment and Conrail's 12 acres.

Three high-rises are built on 3 Embankments. More high-rises are built on Conrail's 12 acres. A monorail is built connecting Journal Square / the hi-rises / Light rail.

Solar cells are installed on all hi-rises. Natural gas fuel cells provide electricity and some water for the hi-rises.

LEGAL ARGUMENTS: Status quo of RR r/w subject to Offer of Financial Assistance ("OFA"), must be maintained, until OFA process has been completed. (Cannot change the nature, status of r/w.) Cannot build on RR r/w, until OFA process has run its course. (See Vicksburg, MS Glass Road decision.) Riffin granted right to file an OFA. (See November

2, 2015 STB decision.) Riffin has equitable title to RR r/w. Riffin has standing to sue in U.S. District Court to enjoin Forest City Ratner from building on RR r/w. (Federal question involved.)

Wasser / FC can sue Conrail per 49 U.S.C. 11704(b). [Carrier liable for damages sustained by a person as a result of an act or omission of that carrier in violation of the Interstate Commerce Act.] Conrail failed to follow dictates of 49 U.S.C. 10903. [Sold / abandoned line without prior STB authority.] Wasser / FC damaged. Can sue in U.S. District Court. [See 11704(c)(1).] Wasser / FC get attorney fees. [See 11704 (d)(3).]

Even though Conrail sold the real estate under the Harsimus line of railroad, per 49 U.S.C. 10903, 11901, and 11906, Conrail could not lawfully sell the 'line of railroad' easement impressed on the real estate under the Harsimus line of railroad, without STB authority. Nor could Wasser buy the line of railroad / easement impressed on the Harsimus line of railroad. See 49 U.S.C. 10901(a)(4).

Therefore, Conrail still 'owns' the Harsimus line of railroad easement impressed on the Metro Plaza real estate, and 'owned' that railroad easement in 2009, when Conrail filed to abandon the Harsimus line of railroad.

Lines of Railroad

A track, and the right-of-way associated with the track, can become a "line of railroad" two ways:

- A. The Interstate Commerce Commission ("ICC") / Surface Transportation Board ("STB") can expressly authorize its creation. See 49 U.S.C. 10901(a) (1) and (2). [New construction (2), or the extension of an existing line of railroad into new territory, over newly constructed track, or over existing non-line of railroad track owned by another carrier (1).]
- B. If a non- 'line of railroad' track (such as a yard, spur, switching, passing track):
 - a. **Is used** for the movement of **'through'** rail cars (as opposed to 'local' traffic)
AND
 - b. **Is used** to carry rail cars to **more than one shipper**. See *Effingham* and Texas Steel mill case.

Once a track becomes a 'line of railroad,' it remains a 'line of railroad,' until such time that abandonment authority is granted, and exercised. See *Kalo Brick* and *Texas / Mexican RR* cases.

Non line-of-railroad track **can be** converted into a 'line of railroad' track. See *Effingham*.

A 'line-of-railroad' track **cannot** be converted into non- line of railroad (Excepted) track. (It first must be abandoned (as a line of railroad).

"Excepted" track

Non- 'line of railroad' track is known as "**excepted**" track. See 49 U.S.C. 10906. Excepted track is subject to the exclusive jurisdiction of the STB. However, it is **not regulated** by the STB. That is, it can be sold, removed, or installed / removed, **without** prior STB authority.

Line Codes 1420 and 1440

Line Codes 1420 (Passaic and Harsimus) and 1440 (Hudson Street Industrial Track), were conveyed to Conrail on **April 1, 1976, pursuant to the Final System Plan ("FSP")**. Only those two "lines of railroad" were **conveyed** to Conrail via the FSP. The FSP also conveyed to Conrail all tracks and rail assets / properties, associated with those two line codes. **But NOT as "lines of railroad."**

Line Code 1440 was the **Hudson Street Industrial Track**. It started in the Harsimus Cove Yard. It traversed south, down Hudson Street, to Essex street, then went West, in the bed of Essex street. It served at least seven shippers, the largest shipper being the Colgate Company.

Line Code 1420 was the United New Jersey Railroad and Canal Company's **Passaic and Harsimus Branch**. It originally started at Exchange Place (MP 0.0), on the Hudson River. (At the East end of present day Columbus Blvd.) When it was built (in **1867**), it followed the bed of the present day Columbus Blvd, to the present-day PATH maintenance-of-way facility (bounded by Columbus Blvd on the South) [MP 1.0]. It then paralleled the PATH right-of-way, to Harrison (Kearny), NJ. [To MP 7.0.]

The original Passiac and Harsimus Branch carried **both** passenger and freight rail traffic. In **1871**, the Pennsylvania Railroad ("**PRR**") leased the Passiac and Harsimus Branch for 999 years. In **1901** the PRR decided to **re-route** freight traffic along 6th Street. It built an elevated line from the Jersey City Cemetery (on Newark Avenue, East of Waldo Street), parallel to, and adjacent to, 6th Street, to the Harsimus Cove Yard. The portion of the elevated line between Brunswick Street and present day Marin Blvd (**formerly Henderson Street**), was called **The Embankment**.

As of **1905**, all Passiac and Harsimus **freight traffic** was routed over The Embankment. All Passenger traffic was routed down the original Passiac and Harsimus Branch (down present-day Columbus Blvd).

In the 1960's, the PRR decided to **cease passenger** service on the Passiac and Harsimus Branch. In **1961**, the PRR **abandoned** the segment of the original Passiac and Harsimus that traversed over present-day Columbus Blvd. (Abandoned its Passenger Line, **from MP 0.0** (Exchange Place) **to MP 1.0** (Columbus at Brunswick.) Freight traffic continued to move over

the Embankment segment.

On **April 1, 1976**, the assets of the Penn Central and the United New Jersey Railroad and Canal Company, were conveyed to Conrail via the Final System Plan. See FSP p. 282. Line Codes 1420 and 1440 were expressly conveyed to Conrail. Only that portion of Line Code 1420 that was between MP 1.0 (original Passiac and Harsimus at Columbus and Brunswick) and MP 7.0 (Harrison / Kearny, NJ), was conveyed to Conrail. (Remember, in 1961, the PRR abandoned that segment between MP 0.0 and MP 1.0, when the PRR abandoned its passenger service.)

Line Codes 1420 and 1440 included all rail assets associated with those two line codes, such as yard, spur, passing and switching tracks, and all real estate associated with those two line codes.

Prior to Conrail's acquisition of the Passiac and Harsimus **freight** line of railroad, (Line Code 1420), all freight traffic traversed over the Embankment tracks, to the Harsimus Cove Freight Yard. Shortly after Conrail acquired Penn Central's Jersey City rail assets, Conrail named the Embankment right-of-way, the **Harsimus Branch**.

The Harsimus Branch, as it crossed Marin Blvd, had **six tracks**. Historic aerials (1954 and 1966), and the Valuation Maps for the Harsimus Cove Yard, show the location, and uses, of the six tracks that crossed Marin Blvd.:

Track One: The northern-most track went to two shippers on the north side of the pier that today is an extension of 6th Street ("**Pier**") [**Elk Warehouse and Chicago Shippers.**]

Track Two: The second track down went to the car float at the end of the Pier.

Track Three: The third track down went to the south side of the Pier. Bulk commodities (such as coal) were off-loaded from rail cars to barges anchored to the south side of the pier.

Track Four: Went to three more car floats south of the Pier.

Track Five: Went around the northern part of the Harsimus Cove Yard, and connected to the Hudson Street Industrial Track. It also was used to route cars to the **William J. Morris Company**, a freight consolidator that had bought 24 acres of the water-front portion of the Harsimus Yard in 1973 / 1974.

Track Six: Went around the southern part of the Harsimus Cove Yard. It connected to the track that served shippers located along Provost Street. A number of spur tracks branched off this track, and served warehouses along the East side of Marin Blvd, between Second Street and Fifth Street.

1979

A 1979 aerial map of the Harsimus Cove Yard depicts only two tracks crossing Marin Blvd: Tracks Two and Three.

Track Two was used to serve shippers located on the Pier: Elk Warehouse, Chicago Shippers, and the barges being loaded on the south side of the Pier. The car float at the end of the Pier, was no longer in use.

Track Three was interconnected to Tracks Two, Four, Five and Six. It was used to service William J. Morris, Manischewitz, and shippers located adjacent to the Hudson Street Industrial track.

Rail Traffic in 1984 / 1974

For the 12-month period ending September 30, 1984, the following shippers received the following number of rail cars:

| | <u>1984</u> <u>Carloads</u> | <u>1974</u> <u>Carloads</u> |
|--|--------------------------------|--------------------------------|
| Elk Warehouse: | 364 | |
| Chicago Shippers: | 1,403 | |
| Wm. J. Morris: | 186 | 4,938 |
| U. S. Packing: | ? | 6,991 |
| Manischewitz: | 35 | |
| Hudson Street Industrial Track Shippers: | | |
| Colgate: | 1,068 | |
| Refined Onyx: | 107 | |
| 'B' Line Trucking: | 41 | |

LINES OF RAILROAD IN 1976

On **August 9, 2007**, the STB, in FD 34818, held that the Embankment Segment [between MP 0.0 (Waldo Street) and MP 0.88 (West side of Marin Blvd)] was conveyed to Conrail via the FSP as Line Code 1420, and was conveyed to Conrail as a "line of railroad."

As stated above, Excepted track (yard, spur, switching, passing track) can be, and will be, as an operation of law, converted into "Lines of Railroad," if they are used for "through" rail traffic, and are used to serve more than one shipper.

Even though neither the STB nor the Special Court expressly held that the Harsimus Branch (Line Code 1420) **East** of Marin Blvd. was a 'line of railroad' when Conrail acquired the Harsimus / Line Code 1420 in 1976, Conrail is judicially estopped from arguing that the Harsimus / Line Code 1420 East of Marin Blvd **is not** a 'line of railroad.' (Jersey City only asked the STB and Special Court to rule on the status of the Harsimus / Line Code 1420 between

Waldo Street and the West side of Marin Blvd.) Conrail's abandonment petition says the Harsimus / Line Code 1420, lies between MP 0.0 (Waldo Street) and MP 1.36 (East of Washington Street). Conrail, in a separate pleading, says MP 0.88 is at the West side of Marin Blvd. So there must be 0.47 miles of Line Code 1420 'line of railroad' East of the West side of Marin Blvd. That means the Harsimus / Line Code 1420 'line of railroad' continues across the Metro Plaza property.

Conrail's 1988 ZTS charts identify the track traversing the Embankment, as Track 215. (200 series tracks are 'lines of railroad.'). Within the Harsimus Cove Yard, track 210 (Hudson Street Industrial Track), branches off of track 215. Track 215 then divides into tracks 731, 732 and 733, which tracks service "William J. Morris." (A freight consolidator, who bought two parcels from Penn Central in 1973 (10 ac, Parcel 'A') / 1974 (14 Ac, Parcel 'B')). See 3144 / 361 (May 11, 1973) and 3165 / 1 (May 29, 1974)

By 1979, only two of the six tracks that crossed Marin Blvd, were being used by Conrail. Those two tracks interconnected with the former Tracks One to Six. The segments of former Tracks One to Six that were in the Harsimus Cove Yard, were used to serve the shippers on the north side of the Pier (Elk Warehouse / Chicago Shippers, served via **Tracks One and Two**), the barges on the south side of the Pier (served via **Track Three**), William J. Morris (served via **Track Five**), and the Hudson Street Industrial Track (served via **Tracks Five and Six**).

Whether Tracks One to Six were **conveyed** to Conrail as lines of railroad, is irrelevant. What is relevant, is how Conrail **used** Tracks One to Six.

Conrail **used** Tracks One to Six for the movement of **through** traffic to **more than one shipper**. Conrail's **use** of Tracks One to Six caused Tracks One to Six to become "lines of railroad."

Once a track becomes a 'line of railroad,' it stays a 'line of railroad,' until abandonment authority is obtained, and exercised. See *The Atchison, Topeka and Santa Fe Railway Company – Abandonment Exemption – In Lyon County, KS*, Docket No. AB-52 (Sub-No. 71X), slip op. at 5 (ICC Served June 17, 1991). ["Because this track was clearly part of a rail line at one time, we find that it cannot be converted into an exempt spur ... solely through the railroad's unilateral decision to change its use of the track segment over time."]

On the 1979 Aerial, and on the Val Map for the Harsimus Cove Yard, Tracks One, Two and Three can be seen going due East from Marin Blvd, to the Pier on the water front. That puts a 'line of railroad' north of the Pep Boys site. Tracks Five and Six can be seen going diagonally across the Metro Plaza land. Spur tracks can be seen branching off of these 'main line' 'lines of railroad.

Yard tracks can be seen branching off the diagonal 'lines of railroad.' Yard tracks, and the land under yard tracks, can potentially be abandoned / sold, without STB approval. (So long as no OFA is filed to acquire the 'line of railroad' adjacent to those yard tracks. Under the OFA process, land adjacent to the line of railroad being abandoned, can also be acquired, even if it has

previously been sold. See *Railroad Ventures*.)

On **August 19, 1985**, Conrail sold the 18-acre parcel where Metro Plaza is currently located, to **National Bulk Carriers**. See Liber 3468, folio 64. On page 65 of that deed, Conrail reserved a **permanent 50-foot wide easement along the entirety of the northern boundary of the parcel sold to National Bulk Carriers, to be used for continued rail operations.**

Conrail never has sought, nor received, authority to abandon that rail easement. Consequently, it still exists.

On p. 66 of the National Bulk Carriers' deed, Conrail reserved a **temporary easement** to continue serving shippers William J. Morris and Manischewitz. Since the easement was being used to serve two shippers, the easement was being used as a 'line of railroad.' And once a 'line of railroad,' always a 'line of railroad.' Consequently, even though Conrail characterized the easement as being 'temporary,' it in fact was a 'permanent' easement, since it was a 'line of railroad' easement. See *Atchison, Topeka and Santa Fe Railway Company – Abandonment Exemption – In Lyon County, KS*, Docket No. AB-52 (Sub-No. 71X), ICC served June 17, 1991.

PRESENT DEVELOPMENT

Forest City's **first hi-rise is being built** (construction started 9-3-15) on the Pep Boys site. Forest City's **second hi-rise is to be built** further south, (construction to start in 2016-2017) clearly on the diagonal 'line of railroad' right-of-way.

Conrail, and Forest City, would try to argue that the Pep Boys land was lawfully sold to National Bulk, due to it being Yard tracks, and that the Pep Boys land is no longer subject to the STB's jurisdiction.

However, the National Bulk deed expressly reserves a 50-foot wide easement across the northern boundary of the National Bulk property (which is the northern boundary of Forest City's property).

The National Bulk deed also reserves 'temporary' easements across the center portion of the National Bulk / Metro Plaza property, which Riffin will argue, still exist, since they are 'lines of railroad' easements, which have never been abandoned.

Riffin's strategy

Riffin desires to stop **all** construction, including construction on the Pep Boys site. To do that, it must be established that the Pep Boys site is still subject to the STB's jurisdiction, and is still subject to the OFA process.

Argument: Pep Boys site is still subject to STB jurisdiction

Most Powerful Argument

Riffin's most powerful argument, is that the National Bulk deed expressly reserved a 50-foot wide easement across the northern boundary of the Metro Plaza parcel. Where Forest City is presently driving piles, is clearly within that 50-foot wide easement.

Riffin's second argument, is that the 'temporary' easement was not 'temporary.' Because the easement was used to serve more than one shipper, the easement was used as a 'line of railroad,' which has never been abandoned.

Riffin's third argument:

A 'line of railroad' includes the land adjacent to the 'line of railroad' tracks. A line of railroad's tracks can be placed anywhere within the line of railroad's right-of-way.

The land between the outer-most tracks within a railroad right-of-way, is a part of the 'line of railroad' right-of-way.

Per *Iowa Terminal, Railroad Ventures*, and *Boston & Maine*, an OFA offeror can acquire, in an OFA proceeding, land adjacent to a line of railroad's right-of-way, **which land was acquired by the railroad when it acquired the line of railroad**, so long as the adjacent land is 'needed for operation of the line of railroad.'

Land that was 'sold' prior to filing an abandonment petition, can still be acquired via the OFA process, so long as the land is 'needed for continued freight rail service.' (See *Railroad Ventures, Boston & Maine*.) [The STB / a court, can order the land be reconveyed back to Conrail. That is not a good option. The OFA purchase price would be the land's present fair market value. The STB / a court, can find that Conrail retained a rail easement over the underlying real estate. A much better option. Rail easements have a Net Liquidation Value of Zero Dollars. The owner of a rail easement has the right to exclusive possession of the full width of the rail easement, to the center of the earth, and to the heavens.]

The Pep Boys land is 'needed for continued freight rail service:' A 'wye' is needed at the East End of the Harsimus, in order to turn trains around. The top of the 'wye' needs to be adjacent to, and parallel to, the Light Rail tracks. The northern-most leg of the 'wye,' needs to traverse over the Pep Boys site. The southern-most leg of the 'wye,' will follow the southern-most line of railroad track, to the southern-most Eastern corner of the Metro Plaza parcel. The land in-between the 'wye' legs, is needed for spur track.

SITE PLANS

Riffin has a number of graphics. The first is a graphic prepared by the STB. The yellow line shows where the STB believes the Harsimus right-of-way is located.

The second graphic has a 'black box' on it. That box is where Metro Plaza is located.

The third graphic is a 'google earth' aerial of the Metro Plaza site. I have scaled the STB's right-of-way graphic onto the google earth graphic. I have also indicated where Forest City has erected a construction fence around its construction site. The building depicted in the upper right-hand corner of the Metro Plaza parcel, within the area enclosed within the construction fence, was the Pep Boys building. The building was demolished in August, 2015. Forest City's first hi-rise is to be built on the foot print of the former Pep Boys building.

Historic aerials can be found at: www.historicaerials.com

Once on the historicaerials' web site, type in the 'search' box: "6th street jersey city, nj"

Put your cursor on the picture, left click and hold your mouse, then move the mouse an inch or so up and to your left. The picture will move, allowing you to view more to the East and South. Look for a baseball field. That is at the corner of Marin Blvd and 6th Street. The Metro Plaza parcel lies East of Marin Blvd, between 2nd street and 6th street.

Zoom in to 30 m or 50 meters.

Click on the following years: 2013. (A fair image of what the site looked like in 2013.)

2004: A good color image of the site in 2004.

1995: Shows Metro Plaza just after it was built.

1994: Shows Metro Plaza and Washington Blvd being built.

1987: Fair image showing yard tracks.

1979: Good color image showing yard tracks and line of railroad, with catenary pole
Shadows. Shows what the Harsimus Cove Yard looked like just after Conrail
acquired it in 1976.

1966: Fair image showing the yard in 1966.

1954: Good Black & white image of the yard in 1954.

1931: Very poor image of the yard in 1931.

Mr. Cassera: I have asked Ted Cassera, a NJ land surveyor, to survey the four corners of the Metro Plaza parcel, bounded by Marin Blvd, 2nd street, the Light Rail, and 6th Street. I asked him to depict: The construction fence, location of BJ's and Bed Bath and Beyond. And the corners of any excavation / construction. I will provide him with information permitting him to depict where the Harsimus line of railroad right-of-way is located, and where the proposed wye is to be located. On Tuesday, November 17, 2015, aerial photographs of the Metro Plaza site were taken. These aerial photographs will have the boundary lines and lines of railroad overlaid on them.

Mr. Kahn: I have asked Fritz Kahn to read the *Iowa Terminal, Railroad Ventures*, and *Boston & Maine* cases, plus the Vicksburg Glass Road Bridge case. I have asked him to prepare an argument supporting my thesis that there were four tracks associated with the Harsimus line of

railroad, as it crossed Marin Blvd, going East. One line of railroad track continued due East, where 6th Street presently exists, to the water front. Two lines of railroad tracks, went across the Metro Plaza parcel on a diagonal. The land between the outer-most line of railroad tracks, is all a part of the Harsimus line of railroad right-of-way, and is needed for 'continued freight rail service' (As a wye, to turn trains around.)

Mr. Kahn is the former General Counsel for the ICC. He was an ICC staff attorney from 1959 to 1971, when he became General Counsel. He remained General Counsel until January, 1976. That makes him an 'expert' on railroad law.

If you would like, I will send to you copies of the Glass Road Bridge case, and the November 2, 2015 STB decision giving me the right to file an OFA, and a copy of the *Iowa Terminal, Railroad Ventures*, and *Boston & Maine* cases. I also have copies of the deeds to the Metro Plaza parcel.

After you read all of this, ask yourself the question: What is the likelihood that I would be successful in getting a federal judge to declare that I have equitable title to the railroad lines of railroad that traverse the Metro Plaza parcel? What is the likelihood I could get an injunction to stop all construction until the OFA process is completed?

What is the likelihood that Forest City would sue Conrail? And that Forest City's suit against Conrail would induce Conrail to negotiate a settlement? (Which is the ultimate goal.)

Exhibit H

Excerpts from Complaint

Riffin v. Forest City Ratner Companies, US DC for NJ

No. 16-CV-4433-ES

Showing Riffin's Reliance on OFA for Standing

IN THE U. S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

JAMES RIFFIN *
P.O. Box 4044 *
Timonium, MD 21094 *
(443) 414-6210 *
Plaintiff *

Case No.: 16 -

V. *

FOREST CITY RATNER COMPANIES *
1 Metro Tech Center *
Jay Street *
Brooklyn, NY 11201 *
(718) 923-8400 *

G & S INVESTORS / JERSEY CITY, L.P. *
25th Floor *
211 E. 43rd Street *
New York, New York 10017 *
(212) 286-8100 *

G & S METRO PLAZA LLC *
25th Floor *
211 E. 43rd Street *
New York, New York 10017 *
(212) 286-8100 *

GS FC Jersey City Pep I Urban Renewal LLC *
c/o Forest City Residential Group, Inc. *
50 Public Square, Terminal Tower Ste 1100 *
Cleveland, Ohio 44113 *

GS FC Jersey City Pep II Urban Renewal LLC *
c/o Forest City Residential Group, Inc. *
50 Public Square, Terminal Tower Ste 1100 *
Cleveland, Ohio 44113 *

Defendants

*COMPLAINT FOR
DECLARATORY ORDER*

**COMPLAINT FOR DECLARATORY ORDER,
PRELIMINARY INJUNCTION, PERMANENT INJUNCTION**

1. Comes now your Plaintiff, James Riffin (“**Riffin**”), who herewith files this Complaint for a Declaratory Order, asking the Court to determine the property rights of Riffin in a parcel of land situated in Jersey City, Hudson County, New Jersey, commonly known as Metro Plaza (“**Metro Plaza**”), formerly known as the Harsimus Cove Rail Yard, formerly owned by the Penn Central Railway Company, and by the Consolidated Rail Corporation (“**Conrail**”), as detailed below.

2. In the event that the Court determines that Riffin does in fact have property rights in portions of the Metro Plaza Parcel, Riffin further asks the Court to enjoin the Defendants, and their employees, agents, and any person or entity acting on behalf of the Defendants, from changing the status quo of the Metro Plaza Parcel, as it existed on **January 6, 2009**. [The date Conrail filed its abandonment exemption, docketed AB 167 (Sub-No. 1189X), seeking authority to abandon its lines of railroad that traverse Metro Plaza / the former Harsimus Cove Rail Yard. See ¶¶ 15, 68, below.]

THE CONTROVERSY

3. When the Offer of Financial Assistance (“**OFA**”) process began in AB 167 (Sub. No. 1189X), (on **January 6, 2009**), [see 49 U.S.C. 10904, 49 CFR 1152.27 and ¶¶ 69-78 below], the rail assets associated with that abandonment proceeding, **must remain in place, undisturbed**, until the OFA process has concluded.

4. Plaintiff argues that beginning in **August, 2015**, the Defendants unlawfully began disturbing the rail assets associated with the Metro Plaza parcel, by demolishing the Pep Boys building, and by beginning to construct the first of multiple hi-rises.

5. Plaintiff further argues that the Defendants' putative title to the Metro Plaza parcel is infirm (is void *ab initio*), since the Metro Plaza parcel is encumbered by multiple lines of railroad, none of which have been abandoned, and since the Defendants, as non-rail carriers, are prohibited by 49 U.S.C. 10901(a)(4) from acquiring any legal interest in a line of railroad, or in the real estate associated with a line of railroad, without prior authority from the Surface Transportation Board.

BRIEF HISTORY OF THE METRO PLAZA PARCEL

6. On **April 1, 1976**, the **Harsimus Cove Yard** ("Yard"), located in Jersey City, NJ, was conveyed to Conrail via the Final System Plan. Appx 159. Conrail operated several lines of railroad that traversed the Yard. Rail operations in the Yard ceased in 1988.

7. On **August 19, 1985**, Conrail conveyed to **National Bulk Carriers, Inc.**, the Defendants' predecessor in title, 18 acres of the Harsimus Cove Yard. See liber 3468, folio 64. Appx 191.

8. On **January 31, 1994**, National Bulk Carriers deeded the majority of the land it acquired from Conrail, to **G & S Investors / Jersey City L.P.** See liber 4690, folio 303. Appx 197.

9. Defendant G&S Investors developed the Parcel.

10. The approximate 8-acre portion of the Yard bounded by Gangemi Drive on the north (6th Street), Marin Blvd. on the west, 2nd street on the south, and the Hudson Bergen Light Rail Line on the East, **known as Metro Plaza**, had structures built on it. The structures were occupied by **Pep Boys**, in the north east corner, **Bed Bath and Beyond**, in the north west corner, by **Shop Rite**, in the south west corner, and by **BJ's Warehouse** in the south east corner. The center / remainder of the 8-acre parcel, was used as a parking lot. See Ex. 2C, Appx 13.

11. In 2005, Conrail sold an adjacent parcel, known as the Embankment (which parcel was south of, and parallel to, 6th Street), to several limited liability companies (the "**LLCs**"). Jersey

City coveted the Embankment parcel. Litigation between the LLCs and Jersey City began, and continues today.

12. In 2009, at the request of Jersey City, the Surface Transportation Board (“STB”) [the Federal agency that regulates railroads / formerly known as the Interstate Commerce Commission (“ICC”)], determined, and ordered, that **the Embankment parcel was CONVEYED to Conrail as a line of railroad**, and further determined that Conrail **had not** sought, nor received, authority to abandon the Embankment parcel. In 2013, the U.S. District Court for the District of Columbia, sitting as the **Special Court**, granted Jersey City’s motion for summary judgment, determining and ordering that the Embankment parcel **was a line of railroad**. See 09 cv 1900, 2013 WL 5423964 (D.D.C. Sept 30, 2013). The D.C. Circuit affirmed the Special Court’s summary judgment order. See D.C. Circuit Appeal No. 13-7175, Decided February 19, 2014.

13. Per **49 U.S.C. 10903**, lines of railroad may not be abandoned, nor sold, without prior authority from the STB. Per **49 U.S.C. 10901(a)(4)**, non-rail carriers may not acquire a line of railroad, without prior authority from the STB.

14. Conrail **never sought**, nor received, authority to abandon, nor to sell, **nor did** the LLCs, or National Bulk Carriers (the Defendants’ predecessor in title), seek, or obtain, authority to acquire, the lines of railroad that traversed the Embankment parcel (the LLCs’ parcel), and that traversed the Harsimus Yard (traversed the Defendants’ Metro Plaza Parcel).

15. On **January 6, 2009**, pursuant to 49 CFR 1152.50 (no rail traffic for past two years), Conrail filed an abandonment Notice of Exemption (“**NOE**”), seeking authority from the STB to abandon its Harsimus Branch. Conrail’s NOE stated that the Harsimus Branch went from Waldo Street, in Jersey City (MP 0.0), through the Harsimus Yard, (MP 0.88 is where the Harsimus Branch crosses Marin Blvd.), to MP 1.36, a point some distance **East** of Washington Street. See Ex. 5-A, Appx 23, a STB graphic depicting the approximate location of the Harsimus Branch.

16. On **March 19, 2009**, Jersey City and CNJ Rail Corporation, pursuant to 49 U.S.C. 10904

40. Multiple Legal Notices will be conspicuously posted on and about the Metro Plaza Parcel, after the Complaint is filed, giving Notice of this Complaint. See Plaintiff's Certificate of Service.

VENUE

41. The Parcel of land that is the subject of this Complaint, is situated in Jersey City, Hudson County, New Jersey, which is within the geographical boundaries of this Court's jurisdiction. Therefore, the Court has Venue to hear the Complaint.

PARTIES

42. **James Riffin** is an individual who desires to obtain, via the Offer of Financial Assistance provisions of 49 U.S.C. 10904, the lines of railroad situated in Jersey City, that Conrail proposes to abandon, which lines of railroad are the subject of a proceeding before the Surface Transportation Board ("**STB**") (the Federal agency that regulates railroads), which STB proceeding has been docketed **AB 167 (Sub. No. 1189X)**.

43. Riffin's principal office is located in New Jersey.

44. The **Defendants** may have varying degrees of property rights in the parcel of land commonly known as **Metro Plaza**, which parcel of land is bounded on the north by Gangemi Drive (6th Street), on the west by Marin Blvd., on the south by 2nd Street, and on the east by the Hudson Bergen Light Rail Line. ("**Metro Plaza**" or "**Parcel**"). The Defendants' putative property rights are summarized below.

45. The principal offices of the Defendants are located in New York, New Jersey and Ohio.

ADDITIONAL FACTS

National Bulk Carriers, traversed any of the Metro Plaza parcel (Lot 3, 47, 50, 51, Block 11603);
and

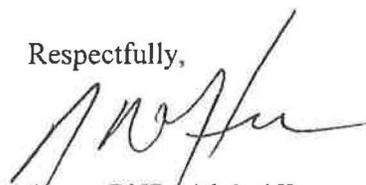
139. **If** the Court finds that the seven tracks / lines of railroad that crossed Henderson Street, and / or the two easements reserved by Conrail in Conrail's deed to National Bulk Carriers, are subject to the OFA procedures in AB 167 (Sub. No. 1189X); **and**

140. **If** the Court finds that Plaintiff has the right to file an OFA in AB 167 (Sub. No. 1189X),

141. **Then** Plaintiff prays that the Court issue an injunction (Temporary and / or permanent), enjoining the Defendants', and their agents, employees, or anyone working on behalf of the Defendants, to comply with Federal law applicable to the OFA process, to wit: Maintain the Metro Plaza parcel in the same condition that it was in on **January 9, 2009**, the date when Conrail filed its abandonment exemption in the proceeding docketed AB 167 (Sub. No. 1189X).

142. And the Plaintiff prays for such other and further relief as would be appropriate.

Respectfully,



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

Exhibit I

Local Press on Riffin's Effort
To Rely on OFA to Block
Redevelopment of Metro Plaza

1. Aug 11, 2016 "Jersey Digs" article describing complaint
2. August 8, 2016 "Jersey Journal" article noting that Riffin says "his chief aim with the lawsuit is to get Conrail [and] Jersey City [to settle] with Hyman ..."
3. March 9, 2016 "Jersey Journal" article stating first phase is \$223 million tower with 85 affordable housing units
4. Sept. 12, 2016 email, Hyman to Riffin
Conveying internet reference (reprinted here for convenience) to Sept. 12 "Jersey Journal" argument about "sinister" lawsuit

Could A New Lawsuit Stall Metro Plaza's Renaissance?

By **Chris Fry** - August 11, 2016



The first tower under construction at Hudson Exchange West

A Maryland man with a litigious history and an oft-stated desire to run a train line has filed a lawsuit seeking to derail Metro Plaza's redevelopment, claiming that old Conrail tracks that formerly occupied the property were never legally and properly abandoned.

The seeds of the lawsuit were planted last year when plaintiff James Riffin, a colorful railway enthusiast, filed a notice with the federal government stating his desire to acquire the entirety of the abandoned Harsimus Branch rail line that runs through much of Jersey City. A portion of that line ran on the Metro Plaza site, although the tracks were demolished when the property was redeveloped in the early 1990s.

Jersey City's building boom has led Forest City Ratner to redevelop the property, which they kicked off earlier this year by breaking ground on Hudson Exchange West. A total of 11 towers could eventually occupy the site. But Riffin filed a lawsuit late last month in U.S. District Court to put the brakes on the project, naming Forest City Ratner, several of their subsidiaries and Metro Plaza owners G&S Investors as defendants.

Riffin, who is representing himself in court, claims that federal law bans Forest City from building on the property because they are "non-rail carriers" who are prohibited from "acquiring any legal interest in a line of railroad...without prior authority from the Surface Transportation Board."

He lays out his case in the 37-page filing, even citing the ongoing battle between Jersey City and the owners of the 6th Street Embankment as evidence. Riffin argues in parts of his complaint that because the 6th Street Embankment owners can't build housing on their land, Forest City shouldn't be able to either.

It's unclear if Conrail ever did properly and legally abandon their tracks that were near Metro Plaza, as their record on that point is inconsistent. A Federal Judge ruled in 2013 that the company did not correctly abandon tracks on the 6th Street Embankment, but Conrail did properly declare a section on 10th Street abandoned, which allowed LeFrak's Embankment House to be built. Conrail themselves have not commented on the case and, somewhat oddly, aren't named as a defendant.



Riffin included a map in his complaint's exhibits estimating where the rail line ran, but he requests that the court hold an evidentiary hearing "to determine the precise location of the seven lines of railroad that crossed Henderson Street."

[Click here to read the full text of the lawsuit.](#)

A licensed attorney with a Masters from the University of Pennsylvania's Law School, Riffin has filed dozens of mostly losing lawsuits and appeals over the last two decades, most of them stemming from property he owns just outside of Baltimore he wishes to operate a rail line on. He's had criminal charges filed against him by authorities over, among other things, "malicious property destruction" and also had an environmental lawsuit brought against him by Maryland officials, eventually being fined \$36,000 for performing clearing and construction on his land without a permit.

Riffin also spent nearly two weeks in Baltimore County Detention Center in 2008 for contempt of court over not posting a \$250,000 bond. A District Court in Maryland also threw out eight of

his lawsuits in a 2007 ruling and wrote that "Riffin's use of federal litigation to stonewall efforts by local authorities to enforce state law is abusive and this Court declines to facilitate those efforts any further."

Regardless of the latest lawsuit's merit, Forest City doesn't appear phased by it, as work on Hudson Exchange has continued to hum along since Riffin's filing on July 20th. Time (and legal fees) will tell if any of Metro Plaza's evolution is disrupted by the case.



Metro Plaza Dr, Jersey City, NJ 07302

Have a tip or something to add to this story? Email tips@jerseydigs.com. Stay up-to-date by following Jersey Digs on Twitter and Instagram, and liking us on Facebook.

Would-be Maryland trainman seeks to stop construction of Jersey City high-rise



By **Terrence T. McDonald** | **The Jersey Journal**

[Email the author](#) | [Follow on Twitter](#)

on August 08, 2016 at 1:32 PM, updated August 09, 2016 at 7:34 PM

A Maryland man has filed a bombshell lawsuit against the **developers of a high-rise under construction** near the Newport mall, saying federal law bars them from continuing to build on the property because it is a former rail yard never properly abandoned by Conrail.

The suit, filed last month in federal court in Newark, threatens to stall not just the completion of the planned 35-story high-rise, but also the long-term plan to construct 11 additional skyscrapers on the 18-acre site, known currently as Metro Plaza.

The complaint could lead to yet another hurdle for Jersey City to clear in its **decade-long mission to acquire the nearby Sixth Street Embankment**.

James Riffin, the plaintiff in the newest lawsuit, alleges that because the lines of rail that formerly traversed the Metro Plaza property were never abandoned by Conrail, the developers of the planned high-rises — a subsidiary of Forest City — don't have rights to the property.

Riffin, 73, filed notice with the federal government last year that he intends to acquire the entirety of the abandoned Harsimus Branch rail line, which ran from Waldo Street to the light-rail tracks on the Waterfront. A portion of the line ran on the embankment and on a portion of the Metro Plaza site.

That filing, Riffin says in the lawsuit, could end up giving him a claim on the Metro Plaza site, "from the center of the earth to the heavens."

A request for comment from the Forest City subsidiary was not returned.

[READ THE COMPLAINT](#)



Developers reveal plans for 35-story tower at Jersey City Pep Boys site

The abandonment issue is similar to the one at the heart of the embankment battle. There, the city alleges Conrail did not properly abandon the rail line that sat atop the stone, six-block embankment that ends at Sixth Street and Marin Boulevard before selling it to Victoria Hyman. The dispute is the subject of numerous lawsuits expected to drag out for the foreseeable future.

Riffin's filing with the federal Surface Transportation Board, which regulates railroads, was a notice to file an "offer of financial assistance." Jersey City has filed similar paperwork to acquire most of the old Harsimus Branch rail line. Riffin says in his lawsuit that the Metro Plaza developers are forbidden from acquiring former rail lines without the STB's OK because they are not rail carriers.

Riffin doesn't run any rail companies but said he hopes to. He is a familiar name in the Maryland court system, where his critics called him a frivolous litigant, according to **a 2007 story from The Baltimore City Paper**, which in 2012 **dubbed him a "would-be trainman."** He fought an ultimately losing battle to acquire a rail line in Maryland.

Riffin told The Jersey Journal last week that his chief aim with the lawsuit is to get Conrail, Jersey City, Hyman and **her husband, Steve**, into a room to settle the embankment issue once and for all.

"Think of it like a boil," Riffin said. "How do you get rid of a boil? You lance it, get all the pus out. I'm lancing the boil."

Spokeswomen for Jersey City and Conrail declined to comment.

Terrence T. McDonald may be reached at tmcdonald@jjournal.com. Follow him on Twitter [@terrencemcd](https://twitter.com/terrencemcd). Find **The Jersey Journal on Facebook**.

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'Transformative' 12-tower project underway in Downtown Jersey City



By **Terrence T. McDonald** | [The Jersey Journal](#)

[Email the author](#) | [Follow on Twitter](#)

on March 09, 2016 at 2:08 PM, updated March 09, 2016 at 10:19 PM

JERSEY CITY — Declaring the start of a new era for Downtown Jersey City, Mayor Steve Fulop and developers today celebrated the start of construction of a **new residential high-rise near Newport Mall**, the first of 12 towers planned for the site over the next 20 years.

Fulop and developer Abe Naparstek said the project, known as Hudson Exchange, is one of largest, most transformative projects in the nation. The \$223 million first tower, which will rise 35 stories and include 421 units plus 10,000 square feet of ground-floor retail space and a parking garage with 264 parking spaces, is expected to open in late 2017.

The tower, under construction on the site of the old Marin Boulevard Pep Boys, will also include 85 affordable-housing units, part of a Fulop administration effort to bring more affordable housing to the luxury high-rises along the Waterfront. **A 397-unit tower planned for a lot across Marin Boulevard** will include 80 affordable units, and the mayor said there are a few more similar projects "on deck."

Fulop told The Jersey Journal that it's not fair that in recent years affordable housing has been relegated to neighborhoods far from the posh high-rises along the Hudson River. Just because a building is located Downtown, he said, that doesn't mean a person of modest income should be excluded from living there.

"It really doesn't create diverse neighborhoods," he said. "It's important to have everybody have an opportunity to live in every corner of the city."

Market-rate rents for the building are expected to range from \$2,325 for one-bedroom apartments to \$3,500 for two-bedroom units. Rents on the comparable affordable units will range from \$954 to \$1,194.

The developer will handle renting the affordable units, with the city acting as a check to make sure the residents in the units do not make more than 50 to 80 percent of the area median income, which in Hudson County is \$63,600.

The affordable units come at a price for city and state taxpayers. The council last year **awarded Forest City a 25-year tax break** for the tower under construction now plus \$10 million in redevelopment bonds that will be issued by the city. In addition the state New Jersey Economic Development Authority approved \$40 million in state tax credits for the project. The affordable units revert to market-rate housing when the tax deals expire.



The 10 most lucrative Jersey City tax abatements

Naparstek has argued that without those deals, the tower may not have received financing at all, let alone with 20 percent of the units set aside as affordable.

"There's a huge demand for that type of housing," he said. "It creates a more dynamic, diverse community."

The long-term plan for the entire 18-acre site, now called Metro Plaza, includes a revamped street grid that will connect the site to the neighborhood across Marin Boulevard and to the Waterfront, plus a public plaza.

Councilman-at-large Daniel Rivera grew up in the area, and said the site of the new tower "used to be my playground."

"I appreciate the beauty of the new Jersey City, but I miss the old Jersey City," Rivera said. "I really do."

Forest City is already making a list of people interested in the affordable units. To add your name to the list, email HUDSONEXCHANGEWEST@FORESTCITY.NET.

Terrence T. McDonald may be reached at tmcdonald@jjournal.com. Follow him on Twitter [@terrencemcd](https://twitter.com/terrencemcd). Find [The Jersey Journal on Facebook](#).

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Subject: Fw: Developers of Jersey City tower ask judge to toss 'sinister' lawsuit | NJ.com
From: Eric Strohmeyer (esstrohmeyer@yahoo.com)
To: c.montange@frontier.com;
Date: Monday, September 12, 2016 3:39 PM

Hello Mr. Montange,

FYI: I just received this email from Jim Riffin. Please note, the originator of this email chain appears to be Steve Hyman.

On Monday, September 12, 2016 6:08 PM, jim riffin <jimriffin@yahoo.com> wrote:

On Monday, September 12, 2016 4:20 PM, Steve Hyman <shyman@shyman.net> wrote:

http://www.nj.com/hudson/index.ssf/2016/09/developers_of_jersey_city_tower_ask_for_sinister_l.html#incart_river_index

Steve Hyman
shyman@shyman.net

H: 212-486-9407
C: 917-916-7838 Best Number
F: 212-838-1909

245 East 63rd St Apt 35E
New York, NY 10065

Developers of Jersey City tower ask judge to toss 'sinister' lawsuit



By **Terrence T. McDonald** | [The Jersey Journal](#)

[Email the author](#) | [Follow on Twitter](#)

on September 12, 2016 at 3:51 PM, updated September 12, 2016 at 4:27 PM

JERSEY CITY —The developers behind a 35-story high-rise under construction in Downtown Jersey City have asked a federal judge to throw out **a lawsuit aimed at halting completion of the project**, calling the lawsuit a "sinister" effort on behalf of the plaintiff.

The developers, subsidiaries of Forest City and its partners, say in the 40-page brief filed Aug. 25 in federal court in Newark that plaintiff James Riffin has no standing to sue and that federal courts have no jurisdiction in a matter overseen by the federal Surface Transportation Board.

The brief calls Riffin a "frequent litigant" who has a history of inappropriate court filings and an "utter disregard" for court procedures.

"This suit is nothing more than Mr. Riffin's effort to use this court to wrongfully extract money from the defendants by threatening to interrupt the redevelopment," the brief says.

Riffin, 73, who lives in Timonium, Maryland, declined to comment. His response to the brief has not yet been made public.



A tale of two embankments in Jersey City

The 35-story high-rise is **part of a 12-tower project** planned for what's called the Metro Plaza site, a shopping center at Marin Boulevard and Sixth Street. The **developers have received state and city tax breaks** because they have pledged to set aside 20 percent of the tower's residential units as affordable housing.

The site sits on the former location of the Harsimus Cove Yard, which Conrail in 1985 conveyed to National Bulk. That company in 1994 deeded most of the land to defendant G&S Investors, which developed the site into Metro Plaza.

In his lawsuit, filed on July 20, Riffin alleges that because the lines of rail that formerly traversed the Metro Plaza property were never abandoned by Conrail, the developers of the high-rise don't have rights to the property. He says because he told the STB last year that he intends to acquire the entirety of the abandoned rail line, he could end up owning the site and re-starting a rail line on it. He wants construction on the residential tower halted until that federal matter is resolved.

The plaintiffs say Riffin attempted a similar move — obtaining authorization from the STB to operate a line of rail in Maryland without obtaining any legal title to the property — that was rejected by the STB. Even if Riffin obtained STB's OK to operate a line of railroad on the Metro Plaza site, the developers say, he has no legal title to the property.

"He has not sustained any particularized injury as a result of any act or omission of any defendant," the developers say in their brief. "His alleged harm goes beyond mere speculation or even sheer fantasy. It is something more sinister."

READ THE DEVELOPERS' BRIEF

Terrence T. McDonald may be reached at tmcdonald@jjournal.com. Follow him on Twitter [@terrencemcd](https://twitter.com/terrencemcd). Find [The Jersey Journal on Facebook](#).

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Exhibit J

Excerpts furnished by LLCs to City et al on Sept. 1, 2016:

Memo Riffin to Ratner et al, dated Oct. 14, 2015,
Threatening Litigation against Forest City development

(Excerpts from Memo)

Note: Mr. Riffin and the LLCs frequently and generally misconstrue or misstate the positions taken by City et al, or the goals and plans of City et al. By furnishing copies or excerpts from documents prepared by or arising from Riffin and LLCs, City et al does not indorse or necessarily agree with Riffin/LLC characterizations of and speculations concerning the positions or intentions of City et al, nor does City et al agree with or indorse the Riffin/LLC characterizations of the merits or nature of the legal positions taken or claims presented by either Mr. Riffin or the LLCs. This caveat applies for all exhibits in this discovery-related filing.

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 Strohmeyer: 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

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 Strohmeier. 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,

Exhibit K

Certification of Hours and Costs

Associated with Two Motions to Compel and
Motion for Sanctions

In re: City et al Discovery Against Riffin

In AB 167-1189X

I, Charles H. Montange, counsel for Jersey City et al in STB dkt AB 169-1189X, hereby certify under penalties for perjury that I spent at least 83 hours preparing, serving and filing (1) a first motion to compel when Mr. Riffin defaulted on promised response, (2) a withdrawal of the first motion as moot when Riffin filed tardy objections, (3) comments on Riffin's spurious motion to strike, (4) a second motion to compel, (4) preparation for, travel to and from, and attendance at a hearing on the second motion before Judge Dring, (5) review of documents produced by Riffin in response to the hearing and the discovery tendered, and (6) preparation through September 8 of a motion for sanctions. I further certify that I charge the City a discounted rate of \$200 per hour in light of the fact that two non-profit preservational organizations are co-clients (Rails to Trails Conservancy and Embankment Preservation Coalition). Normal commercial rates are substantially higher. The total fee charged City et al is thus not less than \$16,600 for 83 hours work. I incurred travel expenses of \$1416.50 for the hearing before Judge Dring, and an additional \$445.79 to make copies and serve the various pleadings enumerated above on parties in AB 167-1189X in accordance with STB service requirements and upon Judge Dring as required by STB through September 8, 2016. The total for fees and expenses is thus \$18,462.29. These fees and expenses exclude all amounts attributable to extensive but unsuccessful efforts to arrive at stipulations with counsel for the LLCs (Mr. Horgan) to abate the need for further discovery.

By:



Sept. 10, 2016