

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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	)		ENTERED
GENESEE & WYOMING INC. –	)	Docket No. FD 35654	Office of Proceedings
CONTROL – RAILAMERICA, INC., et al.	)		October 9, 2012
	)		Part of
	)		Public Record

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**COMMENTS AND REQUEST FOR CONDITIONS OF  
RAILROAD SALVAGE & RESTORATION, INC. AND  
G.F. WIEDEMAN INTERNATIONAL, INC.**

**INTRODUCTION**

Railroad Salvage & Restoration, Inc. (“RSR”) and G.F. Wiedeman International, Inc. (“GFW”) hereby submit their Comments and Request for Conditions in response to the Application by Genesee & Wyoming Inc. (“G&W”) for authority to acquire control of RailAmerica, Inc. (“RailAmerica”) (collectively “Applicants”).

**IDENTITY AND INTEREST**

RSR and GFW are commonly controlled, closely held corporations that are in the business of receiving, selling and distributing metal materials. In particular, RSR and GFW receive salvaged rail and other track materials at a yard located in Joplin, Missouri, that RSR and GFW lease from the Union Pacific Railroad Company. RSR and

GFW sort and grade these materials and then distribute them to customers that are primarily located in the State of Arkansas and Mexico.

RSR and GFW's Joplin Yard is exclusively served by the Missouri & Northern Arkansas Railroad Company, Inc. ("MNA"). MNA is one of the regional railroads currently owned by RailAmerica that is the subject of the instant control application. Rail service is the only feasible form of transportation for RSR's and GFW's shipments.

As explained in the Verified Statement of Mr. Gaylon W. Jackson, prior to 2006 RSR and GFW had not experienced significant demurrage charges for the storage of its railcars even though such storage had been occurring as part of the service provided by MNA. In 2006, Fortress Investment Group LLC ("Fortress") obtained a controlling interest in RailAmerica. *Fortress Investment Group LLC – Control Exemption – RailAmerica, Inc.*, STB Finance Docket No. 34972 (STB served December 22, 2006). Almost immediately thereafter, MNA began aggressively pursuing both the assessment and collection of non-freight revenues through imposition of demurrage charges on services that it had previously performed without assessing such charges. MNA has also sought to impose penal interest rates as high as 26% as stated on an annual basis on these charges.

As a result of this new strategy, RSR's and GFW's annual demurrage costs have risen substantially since 2006. Most recently, RSR and GFW have been paying approximately \$20,000 per month for demurrage. Regrettably, over the same timeframe

during which RSR and GFW have confronted a dramatic increase in their non-freight charges (*i.e.*, since 2006), they have experienced a decline in service and customer relations.

RSR and GFW are aware that G&W is seeking approval of its acquisition of control based on representations that the transaction will benefit shippers because doing things the “G&W way” will include an “intense local focus” on service, customer and community dialogue, and heightened reinvestment. While RSR and GFW certainly would be in favor of these benefits were they actually to materialize, its experience with RailAmerica since the Fortress acquisition raises cause for concern. In particular, RSR and GFW have concerns that MNA’s aggressive pursuit of demurrage since 2006 has been driven in large part by the high level of debt associated with the Fortress transaction. A similar concern exists here. G&W will be assuming in excess of \$2 billion in debt relating to this transaction. Shippers like RSR and GFW face great risk that this debt will affect the manner in which G&W interacts with its customers and may cause it to aggressively seek non-freight revenues in a manner that is inconsistent with the stated benefits of the transaction that G&W advances in support of its application for control.

**STATEMENT OF POSITION  
AND REQUEST FOR CONDITIONS**

RSR and GFW hereby join and support the Comments and Request for Conditions submitted in this docket by the Central California Rail Shippers & Receivers Association (“CCRSRA”). In particular, RSR and GFW rely upon, and support,

CCRSRA's Comments to the extent the CCRSRA Comments seek conditions designed to assure that the proposed acquisition will be in public interest. *See* CCRSRA Verified Statements of Charles L. Littlefield, Rick Dreo, Mark Del Papa, and Dr. John Hoegemeier.

As noted by CCRSRA, the instant transaction raises public interest concerns about the impacts of RailAmerica's "non-freight" practices and how these practices might be continued and/or expanded upon if the G&W control application is approved. As Mr. Jackson explains in his Verified Statement, RSR and GFW have been subjected to some of the same "non-freight" practices by MNA, and RSR and GFW share the same concern that these practices will be continued or made worse due to the heavy debt-level that is associated with this proposed transaction.

RSR and GFW are aware that CCRSRA is requesting several conditions be imposed in order to protect the public interest. Specifically, CCRSRA is requesting conditions that will provide some accountability and oversight to the transaction that will allow the Board and the public to monitor whether the effects of the transaction are indeed in the public interest. RSR and GFW support CCRSRA's request for these conditions and ask that they be imposed for the benefit of all of RailAmerica's existing customers, including RSR and GFW.

**CONCLUSION**

For all of the foregoing reasons, RSR and GFW request that the Board condition any approval of the subject transaction upon the conditions requested by CCRSRA.

Respectfully submitted,

RAILROAD SALVAGE &  
RESTORATION, INC.

and

G.F. WIEDEMAN  
INTERNATIONAL, INC.

By: /s/ Frank J. Pergolizzi  
Frank J. Pergolizzi  
Andrew B. Kolesar III  
Slover & Loftus LLP  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Dated: October 9, 2102

Their Attorneys

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of October, 2012, I have caused copies of the foregoing Comments and Request for Conditions to be served by first class mail or by more expeditious means on the parties of record on the Board's official service list for this proceeding.

/s/ Andrew B. Kolesar III  
Andrew B. Kolesar III

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35654**

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**GENESEE & WYOMING INC.  
- CONTROL -  
RAILAMERICA, INC. *et al.***

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**RAILROAD CONTROL APPLICATION**

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**VERIFIED STATEMENT  
OF  
GAYLON W. JACKSON**

My name is Gaylon W. Jackson. I am currently the Secretary for Railroad Salvage & Restoration, Inc. (“RSR”) and President of G.F. Wiedeman International, Inc. (“GFW”). My business address is 1715 Joplin Street, Joplin, Missouri 64804. I am submitting this Verified Statement to express RSR’s and GFW’s concerns regarding the Railroad Control Application filed by the Genesee & Wyoming Inc. on August 6, 2012 in STB Finance Docket No. 35654.

RSR and GFW are engaged in the business of receiving, selling, and distributing metal materials. The salvaged rail and other track materials are received at a yard in Joplin, MO that RSR and GFW lease from the Union Pacific Railroad Company. These materials are then sorted and graded by their quality as either relay, re-roll, or scrap.

RSR and GFW retain the relay quality materials, and ship the re-roll and scrap to various customers located primarily in Arkansas and Mexico.

RSR and GFW's Joplin yard is exclusively served by the Missouri & Northern Arkansas Railroad Company, Inc. ("MNA"). RSR and GFW are entirely dependent upon rail transportation for their shipments to and from the Joplin yard. We presently have no feasible transportation alternative to rail service.

Genesee & Wyoming claims that there will be many benefits relating to its proposed acquisition of control of RailAmerica's regional railroads, including the MNA. Genesee & Wyoming suggest that they will improve safety and that service will improve as they incorporate some of Genesee & Wyoming's customer service methods and performance metrics. In addition, Genesee & Wyoming assert that they will focus on reinvestment, will attempt to foster economic development on all of its properties and that there will be millions of dollars of cost savings associated with the transaction. While RSR and GFW are certainly in favor of improved safety, better service, reinvestment, economic development and cost savings, our experience with past acquisitions of the MNA suggest that there is cause for concern that these benefits are not likely to materialize and that our costs will actually increase and that our already bad service will actually decline.

The principal cause for RSR and GFW's concern relates to the significant level of debt that is associated with the proposed transaction. It is my understanding that the applicants in this transaction are assuming approximately \$2.3 billion in new debt commitment. RSR and GFW are familiar with the Comments being submitted by the

Central California Rail Shippers and Receivers Association (“CCRSRA”). In particular, we are familiar with the Verified Statements being submitted on behalf of CCRSRA by Dr. John Hoegemeier, Charles Littlefield, Rick Dreo and Mark Del Papa. RSR and GFW support the CCRSRA witness statements to the extent they relate to our common concerns about how the high level of debt associated with the Genesee & Wyoming transaction may adversely impact service and customer relations on the RailAmerica regional railroads being acquired by Genesee & Wyoming.

RSR and GFW’s concerns in this regard are historically based. MNA was one of a number of railroads that was acquired by RailAmerica, a noncarrier holding company, in January 2000. *RailAmerica, Inc. – Control Exemp. – RailTex, Inc.*, 4 S.T.B. 479 (2000). In the years prior to this acquisition, RSR and GFW did not pay for any significant demurrage charges relating to the storage of railcars used in our service, despite the fact that there were many occasions where MNA held railcars for RSR and GFW because the cars could not be placed in our yard. Those practices continued for the period from 2000 through the end of 2005. At the beginning of 2005, however, we began receiving invoices from MNA for demurrage charges even though there had been no changes in our operation or the operational interactions between RSR, GFW and MNA. As I previously explained to the Board in *Railroad Salvage & Restoration, Inc. – Petition for Declaratory Order – Reasonableness of Demurrage Charges*, Docket No. NOR-42102 and *G.F. Wiedeman International, Inc. – Petition for Declaratory Order – Reasonableness of Demurrage Charges*, Docket No. NOR-42103, RSR and GFW had been told by senior MNA officials to disregard the invoices for these charges and that

was what we did. Verified Statement dated October 31, 2008. Consistent with that agreement, MNA did not commence any legal action to collect demurrage charges for any cars held between January 1, 2005 and the end of 2006, despite the existence of circumstances where such charges had been invoiced but not paid.

In December, 2006 RailAmerica was acquired by Fortress Investment Group LLC. *Fortress Investment Group LLC – Control Exemption – RailAmerica, Inc.*, STB Finance Docket No. 34972 (STB served December 22, 2006). Almost immediately MNA began taking a far more aggressive position on demurrage charges. Shortly after the Fortress transaction was finalized, MNA filed a complaint against RSR and GFW in the United States District Court for the Western District of Missouri seeking to collect approximately \$350,000 for alleged demurrage charges for January 1, 2005 through July 2008, plus interest charges that were as high as 26% on an annualized basis.

Since that time, RSR and GFW have *paid* MNA in excess of \$900,000.00 in demurrage charges for the 48 month period from August 4, 2008 through October 1, 2012. This amount equates to an average of almost \$19,000.00 per month – an amount that is more than double the average monthly amount of slightly more than \$8,000.00 that RSR and GFW have been billed for demurrage for the 43 month period between January 1, 2005 and July 2008.

RSR and GFW dispute the charges that MNA is attempting to collect for the 2005 through July 2008 time period. RSR and GFW believe that it has valid defenses to MNA's attempt to collect these charges and interest, including but not limited to, an agreement by MNA to waive right to collect any of these charges by virtue of the

representations that it made to our companies in prior to Fortress' acquisition. RSR and GFW understand that this control application is not the forum for the resolution of our disputes with MNA regarding its demurrage charges and its attempt to impose penal interest rates on top of those charges. RSR and GFW nevertheless believe these experiences are relevant to this proceeding because we are concerned that MNA's aggressive approach to collection of demurrage and penalty interest rates in both the period covered by the parties' litigation, as well as in the period between August 2008 and October 2012, has been greatly influenced by the Fortress transaction and the need for Fortress to enhance non-operating revenues due to its high debt load.

Equally disturbing has been the fact that since Fortress acquired a controlling interest in RailAmerica, RSR and GFW have observed a deterioration in service levels and a significant lack of interest in maintaining customer relations. Since that time, RSR and GFW have encountered reluctance on the part of MNA to work with RSR and GFW to improve actual service and to minimize the delays that we are experiencing in obtaining and moving our railcars. Similarly, MNA has shown a total lack of interest in developing any solutions to our situation through the improvement of track availability that could eliminate the alleged demurrage and penalty interest charges they seem more interested in collecting.

Essentially, RSR and GFW get to pay more to receive less as MNA's focus has shifted from providing quality service to finding alternate ways to generate revenues *without* providing service. RSR and GFW fear that the problems we have experienced

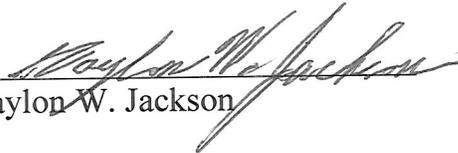
since RailAmerica's last acquisition will continue, and maybe even get worse, if the Board allows another transfer of control to another purchaser with a high debt ratio.

In sum, RSR and GFW are deeply concerned that a bad situation is about to be made much worse. Railroads are supposed to be in the business of providing rail service – as opposed to generating revenues through non-service. When railroads are heavily in debt it increases the need to supplement operating income with non-operating assessments and charges. That is precisely what we believe happened with MNA since Fortress obtained approval to acquire control.

For all of these reasons, RSR and GFW ask that the STB carefully consider this transaction and its potential to result in ever-worsening service and customer relations for RailAmerica customers. We ask that the Board order continued oversight of the transaction to assure that service levels and operating practices do not deteriorate further and to prevent further efforts by these railroads to engage in practices that emphasize generation of revenues through non-service, as opposed to practices that truly will result in improved service for its customers.

## VERIFICATION

I, Gaylon W. Jackson, verify that I have read the foregoing Statement, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.

  
Gaylon W. Jackson

Executed on October 4, 2012