

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH, KATHLEEN
KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

**OPPOSITION OF THE PETITIONERS TO
MOTION OF DANA COMPANIES TO DISMISS FOR LACK OF JURISDICTION**

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Part of
Public Record

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Date: September 10, 2012

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OPPOSITION OF THE PETITIONERS

Diana Del Grosso, Ray Smith, Joseph Hatch, Cheryl Hatch, Kathleen Kelley, Andrew Wiklund, and Richard Kosiba (the “Complainants”), by counsel, hereby submit the following Opposition to the Motion of the Dana Companies to Dismiss for Lack of Jurisdiction..

I. THE “DANA COMPANIES” HAVE BEEN INDIVIDUALLY NAMED.

In its Motion to Dismiss, the named Dana Companies argue that the “Dana Companies” is not a separate legal entity. Nonetheless, the Petition for Declaratory Order lists the following named companies under the banner of the “Dana Companies:”

Grafton Upton Railcare, LLC ("GU Railcare")
Dana Transport, Inc.
Dana Rail Care
Liquid Transport Company
International Equipment Leasing, Inc.
Suttles Truck Leasing, LLC
Dana Container, Inc.

The named Dana Companies make no claim of prejudice as a result of being served by and through the “Dana Companies” at the address noted on its website in New Jersey. Indeed,

Attorney Hocky has filed his motion on behalf of all named Dana Companies. The website www.danacompanies.com lists the addresses of all the named Dana Companies, except GU Railcare and Liquid Transport, as 210 Essex Avenue East, Avenel, NJ 07001. For these reasons and those set forth below, the named companies should not be dismissed.

II. THE G&U RAILROAD HOLDS OUT “DANA TRANSPORT” AS PROVIDING SERVICES AT ITS UPTON FACILITY.

The G&U has claimed that all activities at the Upton railyard are a part of “rail transportation” as that term is used in 49 U.S.C. 10501. Reply at p. 4. The G&U acknowledges that it has an agreement with GU Railcare, a named Dana Company. The G&U website advertises a relationship with Dana Transport, another named Dana Company.¹ If the activities of GU Railcare and Dana Transport are protected by preemption, they must constitute “rail transportation” under the statute. Therefore, these entities, at a minimum, are subject to the jurisdiction of the Board.

This matter is analogous to others in which the Board has exercised jurisdiction when investigating the same question. Specifically, in the following matters non-rail carriers have been listed as a named party:

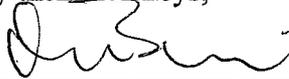
- * Coastal Distribution LLC in Town of Babylon and Pinelawn Cemetery - Petition for Declaratory Order, Finance Docket No. 35057

¹ The G&U website does **not** mention GU Railcare at all, as of a search conducted. September 10, 2012, at 11:09 AM.

- * Boston Railway Terminal Corporation in Town of Milford, Massachusetts- Petition for Declaratory Order, Finance Docket No.: 34444
- * Hi Tech Trans, LLC (Hi Tech) in Hi Tech Trans, LLC , Petition for Declaratory Order Newark, NJ, Finance Docket No. 34192 (Sub-No. 1)

DATE: September 10, 2012

Petitioners,
By their attorneys,



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CERTIFICATE OF SERVICE

I, Mark Bobrowski, attorney for the Petitioners, hereby certify that I served a copy of Petitioners' Response with all Exhibits and Petitioners' Opposition to Motion to Dismiss to the following entities, by email through counsel, and by first class mail, postage prepaid:

First Colony Development Company, Inc.
929 Boston Post Road East
Marlborough, MA 01752

Grafton and Upton Railroad
50 Westboro Road
North Grafton, MA 01536

The Dana Companies
210 Essex Avenue East
Avenel, NJ 07001

Upton Development Group
31 Whitewood Road
Milford MA 01757

James E. Howard, Esquire
70 Rancho Road
Carmel Valley, CA 93924