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September 24, 2013

By E-Filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20024

234882
ENTERED
Office of Proceedings
September 24, 2013
Part of
Public Record

RE: Horry County, South Carolina, et al vs. Baltimore and Annapolis Railroad
Company d/b/a Carolina Southern Railroad Company, Defendant
Docket No. NOR 42138

Dear Ms. Brown:

I hereby transmit to you Defendant's Answer to Formal Complaint in the above-referenced matter.

With warm regards, I am
Yours truly,

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain and A. Preston Brittain
TCB/APB/all

cc: Michael F. McBride, Esq. (mfm@vnf.com)
Thomas F. McFarland, Esq. (mcfarland@aol.com)
Mike Ogborn (mike@ogbornconsultinggroup.com)
James Burnley (jhburnley@venable.com)

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42138

HORRY COUNTY, SOUTH CAROLINA,
MARION COUNTY, SOUTH CAROLINA,
COLUMBUS COUNTY, NORTH CAROLINA,
CITY OF CONWAY, SOUTH CAROLINA,
TOWN OF FAIR BLUFF, NORTH CAROLINA,
TOWN OF CHANDBOURN, NORTH
CAROLINA, TOWN OF TABOR CITY, NORTH
CAROLINA, CITY OF WHITEVILLE, NORTH
CAROLINA

**ANSWER TO FORMAL
COMPLAINT**

AND

METGLASS, INC.

Complainants.

v.

THE BALTIMORE AND ANNAPOLIS
RAILROAD COMPANY, d.b.a. CAROLINA
SOUTHERN RAILROAD COMPANY

Defendant.

Attorney for Complainants

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Date: September 24, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35763

HORRY COUNTY, SOUTH CAROLINA,
MARION COUNTY, SOUTH CAROLINA,
COLUMBUS COUNTY, NORTH CAROLINA,
CITY OF CONWAY, SOUTH CAROLINA,
TOWN OF FAIR BLUFF, NORTH CAROLINA,
TOWN OF CHANDBOURN, NORTH
CAROLINA, TOWN OF TABOR CITY, NORTH
CAROLINA, CITY OF WHITEVILLE, NORTH
CAROLINA

AND

METGLASS, INC.

Complainants.

v.

THE BALTIMORE AND ANNAPOLIS
RAILROAD COMPANY, d.b.a. CAROLINA
SOUTHERN RAILROAD COMPANY

Defendant.

ANSWER TO FORMAL COMPLAINT

The Defendant, The Baltimore and Annapolis Railroad Company d.b.a. Carolina Southern Railroad Company, designated as CALA responds to the Formal Complaint filed pursuant to 49 U.S.C. §11701(b) and 49 C.F.R. §1111.1, *et. seq.* as follows:

1

All of the allegations in the Formal Complaint that are not specifically admitted by CALA are deemed to be denied and should a hearing become necessary, CALA would expect the Complainants to prove those allegations.

2

That the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 are admitted.

3

That the allegations of paragraph 9 are admitted insofar as they allege that Metglass, Inc. has a place of business in Conway and was a user of CALA's rail service. The remaining allegations of paragraph 9 are beyond the knowledge of the Defendant at this time and, therefore, this Defendant would require proof thereof should a hearing become necessary. In addition, only a subcontractor of Metglass has been a customer of Waccamaw Coast Line Railroad (WCLR). Further, upon information and belief, neither CALA nor WCLR can serve Metglass.

4

That the allegations of paragraphs 10, 11 and 12 are admitted.

5

That the allegations of paragraph 13 are admitted insofar as they allege that the Federal Railroad Administration (FRA) inspected bridges on CALA's rail line and that as a result of that inspection significant and expensive modifications, alterations and upgrades to numerous bridges were required. That CALA, at its own expense, repaired many of the bridges in hopes of satisfying FRA but that the requirements to repair them in a particular fashion were prohibitively expensive and, as a result, CALA had to temporarily suspend rail operations for a period of time.

6

That the allegations of paragraph 14 are admitted insofar as they allege that the FRA representatives again inspected the bridges on CALA's rail line and found continuing defects in their opinion and that as a result of the prohibitively expensive upgrades, additions and

alterations required by the FRA, at the advice of the FRA, CALA ceased rail operations on August 24, 2011 (on the affected portion of the line).

7

That since that date and before, CALA has tried on numerous occasions to obtain financing for the upgrades required by the FRA. That some of the Complainants in this action have assisted in and aided the efforts to obtain funds designated by various political subdivisions for the upgrades required to allow CALA to resume operations. This process is ongoing that CALA continues to seek funding from a variety of sources to allow the upgrades required by the FRA but at no time has CALA abandoned such an effort and that those efforts continue. That CALA is committed to returning the line to full rail operations. That upon information and belief the FRA RIFF loan program is under review.

8

That the allegations of paragraph 15 are admitted insofar as they allege that CALA has completed some repairs on defective bridges and at one time estimated it would cost approximately \$2 million for a complete upgrade to satisfy the FRA recommendations and requirements.

9

That the allegations of paragraph 16 are admitted.

10

That the allegations of paragraph 17 are admitted insofar as they discuss an embargo and that it remains in effect. The allegations contained in the last sentence of paragraph 17 are denied.

11

That the allegations of paragraph 18 are admitted.

12

That the allegations of paragraph 19, in determining conclusions of the Committee as referred to in the Formal Complaint, are beyond the knowledge of this Defendant. That there has been an ongoing request for the restoration of rail service. That Ken Pippin and CALA have done their best to communicate with all interested parties and groups. That no funding has been obtained. That as of this time no agreement has been reached; however, CALA continues to actively pursue the sale of the rail line for fair value on a reasonable basis and obtain financing or investment so that the rail operations can continue. The embargo remains in effect because it meets the balancing tests set by the 7th Circuit Court of Appeals and the Surface Transportation Board.

13

That the allegations of paragraph 20 are beyond the knowledge of this answering Defendant and, therefore, this Defendant would require proof thereof should a hearing become necessary.

14

That the allegations of paragraph 21 are denied with proof required thereof should a hearing become necessary. Mr. Pippin and CALA are open to and continue to try to find means to operate the rail line. To the extent that paragraph 21 alleges Ken Pippin has stated that while the embargo continues CALA can hold out indefinitely because a non-running railroad does not cost him much and CALA continues to derive income from easement agreements, this Defendant would contend that if any such comment was ever made it was taken out of context. Mr. Pippin

has expressed his desire to continue to operate the railroad and has tried to minimize certain administrative costs, etc. so that CALA could survive this governmental imposition of expensive repairs.

15

That the allegations of paragraph 22 are denied. That, upon information and belief, CALA served approximately fifteen (15) shippers and receivers of freight. That, prior to the economic recession, CALA transported approximately three thousand (3,000) carloads per year. That in the year 2008, CALA transported approximately seven thousand seven hundred fifty-four (7,754) carloads and had approximately twenty-five (25) customers.

16

That with respect to the last paragraph titled Violation of the Law and Requested Relief Defendant strongly feels that the recitation of the law in this section should be left to the cases which deal with this matter in the Appellate Courts of the United States. That an embargo is reasonable based on a five-prong test as set forth by the 7th Circuit. That time is not the only factor in determining the reasonableness of an embargo.

That the allegations set forth in this last section, should a hearing become necessary, must be proved by the Complainants and that CALA has done all that is economically feasible to repair the bridges. That CALA is in the process of trying to reach a sale for fair value so that another operator can continue the rail operation. That CALA has not and has no plans to seek abandonment of the complete line. Under the circumstances, a reasonable time has not passed. That CALA is doing its best to repair the bridges and to sell the rail line.

That the reasonableness of the embargo must be determined by the Surface Transportation Board and eventually, should either side be disappointed in its findings, the

matter should be decided by an Appellate Court of the United States. That the length of the embargo is only one factor to be considered. That CALA's embargo is in no way an unlawful abandonment.

17

That the allegations concerning CALA's failures are denied based on the statements contained herein.

18

That CALA would ask that the Complainants stay any further proceedings until CALA has had a reasonable time to exhaust efforts to sell the rail line while at the same time attempting to obtain financing for necessary repairs and would further request assistance from the Surface Transportation Board to mediate and/or negotiate a sale for fair value to a motivated buyer suitable to all parties.

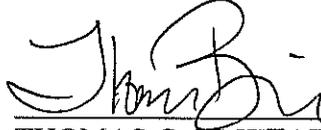
19

That CALA fears the filing could impair its efforts to sell for fair value.

20

Wherefore having answered, CALA seeks justice consistent with United States Constitutional provisions for the protection of property rights.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tom Brittain', written over a horizontal line.

THOMAS C. BRITTAIN
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Attorneys for Defendant

BEFORE THE
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CAROLINA

CERTIFICATE OF SERVICE

AND

METGLASS, INC.

Complainants.

v.

THE BALTIMORE AND ANNAPOLIS
RAILROAD COMPANY, d.b.a. CAROLINA
SOUTHERN RAILROAD COMPANY

Defendant.

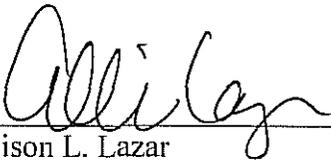
I, Allison L. Lazar, hereby certify that I am an employee of The Brittain Law Firm, P.A., attorney for Defendant The Baltimore and Annapolis Railroad Company d.b.a. Carolina Southern Railroad Company and that I caused to be mailed by electronic mail and by U.S. first class mail this day, September 24, 2013, the documents listed below in the above entitled action to the parties set out below:

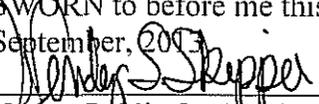
DOCUMENTS: Answer to Formal Complaint

PARTIES:

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Allison L. Lazar

SWORN to before me this 24th day of
September, 2013

Notary Public for South Carolina
My Commission Expires: 03/11/2016