

Before the Surface Transportation Board

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Conrail -- Abandonment            )  
  ) AB 167 (Sub-no. 1189X)  
--in Hudson County, NJ.        )

ENTERED  
Office of Proceedings  
June 27, 2016  
Part of  
Public Record

and

CSX Transp. - Discon. of        )  
Service - same                    ) AB 55 (Sub-no. 686X)

and

Norfolk Southern -                )  
Discon. of Service - same) AB 290 (Sub-no. 306X)

Comment in Reply to Riffin's Motion to Strike  
dated June 7, 2016

This Comment, on behalf of City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, "City, et al"), is in response to a "Motion to Strike" filed by Riffin dated June 7, 2016. The motion to strike was evidently aimed at City et al's paper (also filed June 7) withdrawing our motion to compel Riffin to respond to some discovery (document requests) directed at Riffin.<sup>1</sup> City et al filed the withdrawal because Riffin belatedly served City et al with a set of objections to our document requests, and then argued in a set of filings that

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<sup>1</sup> The Board's website records the withdrawal as a motion, but it is not a motion. It merely concurs that the original motion to compel is now moot.

our May 2 motion to compel was moot. We agreed, and properly withdrew the motion to compel, reserving the right to file a new one based on Riffin's belated service of objections.

Riffin's June 7 motion to strike, which was evidently filed before our withdrawal was even filed, is an apparent reply to our withdrawal, but the withdrawal was in the nature of a reply to Riffin's own observation of mootness. As a reply to a reply, Riffin's motion to strike is impermissible under this Board's rules (49 C.F.R. 1104.13(c)). It should not be accepted for the record.

If Riffin's "motion to strike" is left in the record, City et al note that it appears to be a jeremiad aimed at City et al's observation that this proceeding should be focused on Conrail's unlawful de facto abandonment and sale of the Harsimus Branch to a developer (212 Marin Boulevard, LLC et al), and remedies for that unlawful action. City et al argued that the focus should not be on a discovery dispute with Riffin, who professes that he is participating in this proceeding (i.e., seeking to file an OFA) to assist the developer in achieving non-rail ends. Riffin's paper basically asserts that, contrary to the representations of City et al, Riffin is not in the proceeding for the developer. But that is not what he has said

elsewhere, including to courts and indeed to this Board.<sup>2</sup> He has instead represented that he is the developer's "back-up plan",<sup>3</sup> which certainly indicates he is or hopes to be in cahoots with the developer, and that he will place the bulk of the property in the developer's hands if he is successful.<sup>4</sup> He may view what he has said as "irrelevant," "impertinent" or "scandalous" or whatever when City et al quotes it back to him, but we are entitled to use his own statements against him and argue from them. If Mr. Riffin is in cahoots or even would-be cahoots in some fashion or other with the developer, as he has claimed, then City et al are entitled to pursue discovery and ultimately relief accordingly. In sum, if anything should be stricken as "impertinent" (Riffin's word), it should be Mr. Riffin's six-year out-of-time participation in this proceeding as some sort of safe harbor for the developer.

Riffin also goes off on rescission remedies in his paper. These are irrelevant to his "motion," but one of his claims (at p. 5) does merit specific response, if this Board leaves his

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<sup>2</sup> Some of Riffin's explanations of his work with and for the developer are discussed in City et al's Motion to Compel filed May 2, 2016, in this proceeding, at p. 1 n.1 and Ex. D.

<sup>3</sup> See p. 10 of his Riffin's pleading filed in this proceeding on June 11, 2015.

<sup>4</sup> Id. (Riffin tells this agency he planned to place "90%" of the property in the hands of the developer if the Riffin OFA was successful).

paper in the record. City et al note that the party that Riffin seeks to assist (the developer, d/b/a 212 Marin Boulevard LLC, et al) evidently wants this agency inter alia to rubberstamp an unlawful abandonment, to thwart a successful OFA on the part of City of Jersey City, and otherwise to deprive City et al -- and the public at large -- of any meaningful environmental or transportation law remedy. Yet as we frequently point out, the developer elsewhere argues that Conrail at the pertinent times fraudulently misrepresented not only to the developer, but also to this agency, the Courts, and the City that this agency lacked jurisdiction over the Harsimus Branch. This amounts to saying that Conrail intentionally engaged in an unlawful abandonment. That amounts to admitting that Conrail abused this agency's processes. In other cases, similar abuse of this agency's processes has resulted in deed invalidation and/or orders for reconveyance. Indeed, rescission or reconveyance is a quite normal remedy for fraudulent misrepresentation in the sale of property. It is obviously important here, because Conrail has demonstrated that the developer was complicit in the very fraudulent misrepresentations to the courts, this agency, and the City of which the developer elsewhere complains.

Wholly apart from remedies for the fraudulent or negligent misrepresentations available for such abuse of this agency's jurisdiction directly from this agency, City et al have

frequently pointed out that N.J.S.A. 48:12-125.1 on its face provides that Conrail's deeds to a developer in advance of STB abandonment authorization are void. The state statute applies even if Conrail, the developer, or both did not engage in fraudulent or negligent misrepresentations.

Although he has no interest in the issue, Riffin attacks this state statute, evidently as a willing catspaw for the developer. Riffin asserts that the referenced statute is unavailable pursuant to City of Jersey City v. Conrail, 741 F.Supp. 131, 142 (D.D.C. 2010). The case Riffin cites involved an effort by Conrail and the developer to evade STB jurisdiction by contending that City et al lacked standing even to contest the issue whether STB had jurisdiction over the Harsimus Branch. The District Court agreed with Conrail and the developer, ruling that City et al lacked standing, on the ground they had no remedies before or dependent on STB. Had that result stood, this proceeding would have been void, and there would be no OFA by Riffin or anyone else. Fortunately, the District Court decision was reversed at 668 F.3d 741 (D.C. Cir. 2012). The Court of Appeals held that the lower court cannot find lack of standing by purporting to resolve all merits issues against the parties seeking standing. Instead, the lower court must assume that the parties seeking standing would prevail on the merits. The District Court's purported rulings on remedies thus carry no

weight. They are also wrong, but this paper is not the place to argue remedies. Suffice it to say that City et al continue properly to maintain that the Conrail deeds are invalid under the state statute.

Failure to comment further on Riffin's motion should not be taken as an admission of any statement, claim or argument he makes contrary to the interests of City et al. City et al deny all statements and arguments contrary to those interests. The entire motion to strike should be removed from the record for the reasons expressed herein.

Respectfully submitted,



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Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 27th day of June 2016 addressed to the parties or their representatives per the service list below, unless otherwise indicated.



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