



PAN AM RAILWAYS
IRON HORSE PARK
NO. BILLERICA, MA 01862

225258

LEGAL DEPARTMENT
(978) 663-1029

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JUN 19 2009

Part of
Public Record

June 19, 2009

The Honorable Anne K. Quinlan
Secretary
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423-0001

**RE: STB Docket AB-32 (Sub-No. 100)
Boston and Maine Corporation, Inc. and Springfield Terminal
Railway Company – Adverse Discontinuance of Operating Authority–
New England Southern Railroad Company**

Dear Secretary Quinlan:

Please find enclosed APPLICATION FOR ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY along with the filing fee in the amount of \$22,600.00 made payable to the Surface Transportation Board.

FEE RECEIVED

JUN 19 2009

**SURFACE
TRANSPORTATION BOARD**

Very truly yours,

Michael Geary, Esq.
Pan Am Railways, Inc.
(978) 663-1025

FILED
JUN 19 2009
**SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**DOCKET NO. AB-32
(Sub. No. 100)**

**BOSTON AND MAINE RAILROAD &
SPRINGFIELD TERMINAL RAILWAY
COMPANY- ADVERSE DISCONTINUANCE
OF OPERATING AUTHORITY- NEW
ENGLAND SOUTHERN RAILROAD CO., INC.**

**APPLICATION FOR ADVERSE DISCONTINUANCE
OF OPERATING AUTHORITY**

Applicants:

**BOSTON AND MAINE
CORPORATION &
SPRINGFIELD TERMINAL
RAILWAY**

Attorney for Applicants

**Michael Q. Geary
Staff Attorney
1700 Iron Horse Park
North Billerica, MA 01862
(978) 663-1029**

**Dated:
Filed:**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**DOCKET NO. AB-32
(Sub. No. 100)**

**BOSTON AND MAINE RAILROAD &
SPRINGFIELD TERMINAL RAILWAY
COMPANY- ADVERSE DISCONTINUANCE
OF OPERATING AUTHORITY- NEW
ENGLAND SOUTHERN RAILROAD CO., INC.**

**APPLICATION FOR ADVERSE DISCONTINUANCE
OF OPERATING AUTHORITY**

Pursuant to the Board's decision served February 12, 2008, granting partial waivers of certain Board regulations in connection with filing a third-party or "adverse" discontinuance application, Boston and Maine Corporation (the "B&M") and the Springfield Terminal Railway Company ("ST") (collectively "Pan Am") hereby file this application for a determination in accordance with 49 U.S.C. §10903 that the public convenience and necessity permit discontinuance of the operating authority of New England Southern Railroad Co. Inc. ("NES") over approximately twenty-seven (27) miles of rail line in Central New Hampshire.

FACTUAL BACKGROUND

B&M is a Class II railroad that owns rail lines in Maine, New Hampshire and Massachusetts, which in turn are leased to ST¹. NES is a Class III railroad operating over certain lines in New Hampshire and elsewhere. The B&M entered into a Lease Agreement with NES on or about January 14, 1985 (the "Lease") to "operate and provide service on the leased lines", while reserving certain rights to B&M that were subsequently assumed by ST.² **Verified Statement of Roger D. Bergeron ("Bergeron VS") at Paragraph 3.** The only right(s) granted to NES under the Lease is/are that of a lessee; B&M did not convey ownership in the Line nor its common carrier rights and obligations to NES, nor did B&M evidence such intent in the Lease. **Bergeron VS at Paragraph 4.**

The Lease affects the following lines of railroad: (1) a portion of the line of railroad known as the New Hampshire main line from mile-post B80.68 at Penacook, New Hampshire to milepost B56.00 at Manchester, New Hampshire; (2) the portion of the former Claremont and Concord Railroad line from the switch to the New Hampshire main line at valuation station 1839+42.15 to valuation station 41+98; and (3) one track for interchange purposed in the B&M yard at Manchester, New Hampshire (the "Subject Line"). The Lease is attached hereto as **Exhibit A and Bergeron VS at Paragraph 2.**

The original ten year term of the Lease has long since expired, but NES operations continued over the Subject Lines pursuant to Section VII of the Lease. **Bergeron VS at Paragraph 5.** Unfortunately, earlier this decade numerous disputes arose between NES and Pan Am relating to the payment of invoices and the condition of

¹ The ST lease is dated February 12, 1987, *I.C.C. Finance Docket No. 30993.*

² Finance Docket No. 30618

the Subject Line, disputes which caused the relationship to deteriorate significantly and leading Pan Am to provide written notice of termination of the Lease on or about April 27, 2007, effective August 1, 2007. **Bergeron VS at Paragraph 6.** This Notice is attached hereto as **Exhibit B and Bergeron VS at Paragraph 6.** Upon serving said notification that Pan Am intended to resume operation of the Subject Line, NES informed Pan Am that it would not voluntarily surrender its operating authority over the Subject Line and initiated litigation against Pan Am, first in Federal Court and then in New Hampshire Superior Court soon thereafter. **Bergeron VS at Paragraph 7.** Availing itself of the court system, NES is pursuing numerous claims for payment of revenues allegedly due, which Pan Am is contesting while also pursuing its own claims for damages relating to the condition of the Subject Line. However, B&M cannot pursue its legal remedies to terminate the Lease and evict NES from the Subject Line because the Subject Line and the operating authority of NES on the Subject Line are subject to the jurisdiction of the Board. Notwithstanding this contentious relationship and ongoing litigation, Pan Am has met with NES on several occasions to attempt to resolve the issues between them, but so far NES has nevertheless refused to voluntarily discontinue the its operations on the Subject Line, utilizing Board jurisdiction as leverage to achieve an advantageous settlement. **Bergeron VS at Paragraph 8.**

On or about August 8, 2007, B&M filed a petition with the Board seeking exemption from several statutory provisions and waivers of certain Board regulations in connection with filing this "adverse" discontinuance application. On or about February 12, 2008, the Board issued a decision on said petition granting in part and denying in part said

exemptions. The information provided herein is in conformity with said decision involving those exemptions granted and those exemptions denied.

In support of this Application B&M submits the following information, as required by 49 CFR 1152.22.

(a) General

(1) Exact names of the applicants.

The exact names of the applicants are Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (collectively "Pan Am")

(2) Whether applicants are common carriers by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

Applicants are common carriers by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

(3) Relief sought (abandonment or discontinuance of service)

Applicants seek an adverse discontinuance of the operating authority of NES on the Subject Line.

(4) Map

See Map attached as Exhibit E

(5) System Diagram Map

Waived per Board's decision served February 12, 2008.

(6) Detailed reason for filing application

This proceeding is governed by a distinct line of decisions that grant adverse discontinuances where the owner of a rail line proposed to replace an operator after the latter's contractual or property right to operate over the line has

expired or has been lawfully terminated, but the operator refuses to voluntarily give up its operating authority. *See, e.g. Fore River R.R. Co. – Discon. Exempt. – Norfolk County, MA* 8 I.C.C.2d 307(1992); *Cheatham County Rail Authority Application and Petition for Adverse Discontinuance*, 1992 ICC LEXIS 224 (Docket No. AB 379-X, decision served Nov. 4, 1992); *Jacksonville Port Authority- Adverse Discontinuance- in Duval County, Fl.*, 1996 STB LEXIS 200 (Docket No. AB-469, decision served 17, 1996); and *Tacoma Eastern Ry. Co. – Adverse Discont. of Oper. Application –a Line of the City of Tacoma in Pierce, Thurston and Lewis Counties, WA*, 1998 STB LEXIS 790 (Docket No. AB-548, decision served Oct. 16, 1998).

A. NES is using Board Jurisdiction as a Shield from the Legitimate Processes of State Law.

As noted above, NES and Pan Am are currently litigating several claims against each other in New Hampshire Superior Court, a proceeding in which NES is permitted to pursue all of its purported claims against Pan Am because the Board does not have exclusive jurisdiction over those claims. However, Pan Am is handicapped in that litigation because it cannot pursue state law remedies to terminate the Lease and evict NES because of the Board's exclusive and plenary jurisdiction over the operating authority of NES under that agreement. *49 U.S.C. §§ 10501(b), 10901.*

Unless and until the Board grants this application to remove its jurisdiction, then that jurisdiction will continue to permit NES to consciously avoid its obligations and to operate despite the agreement of NES that the Lease may be terminated by three (3) months notice after the initial term expires. That

patent unfairness—whereby NES ignores its obligations negotiated at arms length—solely because the Board has continuing jurisdiction over the operating authority of NES, is sufficient for adverse discontinuance authority pursuant to prior Board decisions. See *Modern Handcraft, Inc. – Abandonment*, 363 I.C.C. 969 (1981) (*Modern Handcraft*). (“Where no overriding federal interest exists, we will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of state law.”) See *Chelsea Property owners – Aban. – Portion of the Consol. Rail Corp.*, 8 I.C.C.2d 773 (1992), *aff’d sub nom. Consolidated Rail Corp. v. ICC*, 29 F3d 706 (DC Cir 1994).

Moreover, no overriding federal interest exists to prevent the Board from granting adverse discontinuance authority because there will be no cessation of rail service to customers on the Subject Line, as Pan Am is prepared to make a seamless transition to operate over the Subject Line—which in fact connects to rail lines currently being operated by Pan Am. **Verified Statement of Richard E. Miller (“Miller VS”)** at Paragraph 10. Furthermore by removing the need to transfer cars between Pan Am and NES—and the delays that result—service to customers will actually improve substantially, as discussed further below.

Accordingly, given the clear intention of NES to utilize Board jurisdiction to deprive Pan Am of its state law remedies and the lack of an overriding federal interest in this matter, adverse discontinuance authority should be granted.

B. The Public Convenience and Necessity Permit Adverse Discontinuance.

The issue in an adverse discontinuance proceeding, as in an abandonment or discontinuance proceeding filed by the owner or operator of the rail line, is

whether discontinuance of the operator's rail service is permitted by public convenience and necessity. 49 U.S.C. §10903(d). In implementing that standard in an adverse proceeding, the Board considers the relative burdens that continuation of service on the one hand, and cessation of service on the other, would have on the involved carrier, on the owner-lessor of the rail line, and on the public. *Jacksonville Port Authority – Adverse Discontinuance – in Duval County, FL, supra, 1996 STB LEXIS 200 at *13.*

In this instance, the public convenience and necessity permit adverse discontinuance of the operating authority of NES on the Subject Line because there will be: (a) no burden on NES by such discontinuance due to the fact NES agreed in an arms length negotiation to permit termination of the Lease after the initial term upon three (3) months written notice; (b) there will be no cessation of service—and in fact service will improve—as Pan Am is prepared to assume operation of the Subject Line; (c) Pan Am as the owner-lessor of the Line will not be burdened; and (d) the public will benefit from improved rail service over the Subject Line.

NES cannot claim that it will be burdened by cessation of service for the simple reason that it agreed to the termination provision in Section VII of the Lease. The time to object to such a provision or to claim that it was burdensome was during arms length negotiation, not in this proceeding. In fact, the only burden that NES can in good faith assert is that it will have to defend the validity of the termination provision in State Court if Board jurisdiction is removed, a position that is directly counter to the Board precedent. See, *Modern Handcraft*.

Moreover, Pan Am has developed an operating plan for the Subject Line that will ensure that there is no disruption in service, and is committed to working with NES to obtain a smooth transition of operations once the Lease is terminated.

Miller VS at Paragraph 13. Moreover, service will be improved because the Subject Line will again become a part of Pan Am's integrated system, obviating the need for timely and inefficient transfer of traffic between Pan Am and NES.

Miller VS at Paragraph 11. Once Pan Am service is restored to the Subject Line, Pan Am will assign a crew to be headquartered in Concord, New Hampshire to work a five day per week schedule providing service to the four major customers and a few smaller customers on the Subject Line as long as traffic levels support such service, which is an increase from the approximately two day per week service currently provided to Manchester, New Hampshire, with the increased revenue earned by Pan Am justifying the increased service to transfer cars to and from NES. **Miller VS at Paragraphs 6,7.** Moreover, by having more direct interface with customers, Pan Am would also be in a better position to address specific customer needs, to coordinate the inbound and outbound traffic on Pan Am through freight trains to further reduce transit time for customers.

Miller VS at Paragraph 10.

In light of the foregoing, it is clear that the public convenience and necessity permit issuance of adverse discontinuance of the operating authority of NES on the Subject Line, as NES cannot claim to be burdened by complying with the terms of the Lease, and no other party will be burdened either. To the contrary, the improved service to be realized by existing and future customers on

the Subject Line is a substantial public benefit. Accordingly, the application for adverse discontinuance should be granted.

(7) Name of representative

**Michael Q. Geary, Staff Attorney, Boston and Maine Corporation and
Springfield Terminal Railway Company, 1700 Iron Horse Park, North Billerica,
Massachusetts 01862**

(8) United States Postal Zip Codes

United States zip codes are 03301, 03303 and 03101.

(b) Condition of property

See Verified Statement of Roger Bergeron.

(c) Service Provided.

Sections 1 to 9 waived per Board's decision served February 12, 2008.

(d) Revenue and cost data.

Sections 1 to 3 waived per Board's decision served February 12, 2008.

(e) Rural and community impact.

Sections 1 to 4 waived per Board's decision served February 12, 2008.

(f) Environmental impact.

Waived per Board's decision served February 12, 2008.

(g) Passenger service.

No passenger service on this line.

(h) Additional information.

The applicant shall submit such additional information to support its application as the Board may require.

(i) Draft federal register notice.

See attached Exhibit C.

DRAFT FEDERAL REGISTER NOTICE

A draft Federal Register Notice is attached as Exhibit C to this Petition.

NEWSPAPER PUBLICATION

The Newspaper Notice as required by 49 C.F.R. §1152.20(a)(4) was published at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the involved line is located.

AFFIDAVIT OF COMPLIANCE

Pursuant to the Board's Decision dated February 12, 2008 and 49 C.F.R. 1152.20(a)(3), an Affidavit of Compliance with notice requirements so ordered under said decision is attached hereto as Exhibit D.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons herein stated, the Board should issue a decision finding that public convenience and necessity permit discontinuance of NES's authority to operate over the Subject Line.

Respectfully Submitted,



Staff Attorney
Boston and Maine Corporation
Springfield Terminal Railway Co.
1700 Iron Horse Park
North Billerica, MA. 01862
(978) 663-1029

Dated: June 19, 2009

VERIFICATION

I, Michael R. Garry, verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I also verify that I am qualified and authorized to file this Petition for Exemption.

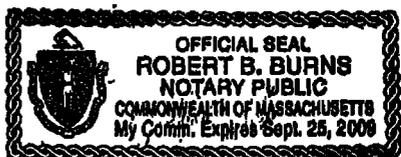
Michael R. Garry

Executed on June 19, 2009

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 19th DAY OF June, 2009.

Robert B. Burns
Notary Public

My Commission Expires: 9-25-09



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of June, 2009, a copy of the Petition for Waiver filed in the above-mentioned proceeding was served by first class mail, postage prepaid, upon:

Keith O'Brien
Baker & Miller, PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington DC 20037

Martin Honigberg
Suloway and Hollis, P.L.L.C.
9 Capitol Street
Concord, N.H. 03301

Bureau of Rail and Transit
State of New Hampshire
Department of Transportation
John O. Morton Building
7 Hazen Drive
Concord, N.H. 03302

Line Shippers:

Blue Seal Feeds
520 Hall Street
Bow, NH 03304

Ciment Quebec
7 Johnson Road
Bow, NH 03304

North Pacific (Saxonville)
287 So. Main
Concord, NH 03301

Public Service of New Hampshire
P.O. Box 330
Manchester, NH 03105

Schnitzer Steel Industries
25 Sandquist Street
Concord, NH 03301

Ensio Resources
97 River Road
Bow, NH 03304

Fortek
1400 Iron Horse Park
North Billerica, MA 01862

All-State Asphalt
P.O. Box 91
Sunderland, MA 01375

Concord Crop Center
6 So. Commercial
Concord, NH 03301

Coastal Forest Products
451 South River Road
Bedford, NH 03110

Innovative Paper Technologies
P.O. Box 739
One Paper Trail
Tilton, NH 03276

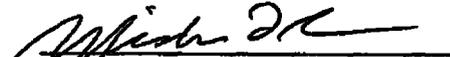

Michael Q. Geary, Esq.

EXHIBIT A

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. _____

JOINT PETITION OF BOSTON AND
MAINE CORPORATION AND NEW ENGLAND
SOUTHERN RAILROAD CO., INC. FOR
EXEMPTION OF CERTAIN TRANSACTIONS
PURSUANT TO 49 U.S.C. § 10505

Boston and Maine Corporation ("B&M") and New England Southern Railroad Co., Inc. ("NES") hereby jointly petition the Commission to exempt, pursuant to 49 U.S.C. § 10505, certain transactions described below from any prior approval which may be required under Subtitle IV of Title 49 of the United States Code, including without limitation 49 U.S.C. §§ 10901, 10903, 11342 and 11343.

I. Facts and Background

1. B&M is a Class I railroad which operates in Maine, Vermont, New Hampshire, Massachusetts, Connecticut and New York. B&M is a wholly-owned subsidiary of Guilford Transportation Industries, Inc., a non-carrier holding company.

2. NES is a Class III railroad which operates in Massachusetts and New Hampshire.

3. B&M currently operates over a line, known as the New Hampshire main line, which extends from Manchester, New

Hampshire through Bow, New Hampshire, Concord, New Hampshire, Penacook, New Hampshire and to White River Junction, Vermont. B&M owns the line between Manchester and Concord and operates the line from Concord to White River Junction pursuant to a lease dated April 10, 1981, from Northern Railroad to the Trustees of the property of Boston and Maine Corporation, Debtor.

4. NES currently operates a line between Lincoln, New Hampshire and Concord, where NES and B&M interchange traffic, and a line at Chicopee Falls, Massachusetts.

II. Description of Proposed Transactions

5. Subject to approval or exemption by the Commission, B&M and NES have entered into a Lease Agreement dated as of January 14, 1985, pursuant to which B&M has agreed to lease to NES the following lines of railroad: (1) a portion of the New Hampshire main line from Manchester to Penacook; (2) a 1.17 mile segment of line extending from the switch with the New Hampshire main line at Concord toward Lincoln; (3) a .49 mile segment of the former Claremont and Concord Railroad line extending from the switch with the New Hampshire main line at milepost B73.71; and (4) one track for interchange purposes in the B&M yard at Manchester.

6. The Lease Agreement, a copy of which is attached hereto as Exhibit A, provides in pertinent part as follows:

(a) NES will operate and provide service on the leased lines, except that B&M will continue to serve the Public Service of New Hampshire plant at Bow.

(b) B&M will retain the right to operate over the leased lines for purposes of providing service at Bow or, at the option of B&M, to certain new customers on the leased lines or in the event that service by NES is not adequate, all as described more fully in Sections 2.01, 2.04 and 6.03 of the Lease Agreement.

(c) NES will maintain the portion of the leased lines from Bow Junction to Penacook, referred to in the Lease Agreement as the "North End". B&M will be responsible for maintenance of the portion of the leased lines from Manchester to Bow Junction, referred to in the Lease Agreement as the "South End".

(d) NES will interchange traffic it originates or terminates on the leased lines at Manchester.

(e) The initial term of the lease is 10 years, and the Lease Agreement shall continue in effect thereafter unless it is terminated by either party giving three months' prior written notice.

III. Transactions to be Exempted

7. The lease of the lines described above by B&M to NES and the operation of those lines by NES will constitute, in effect, a lease and a contract by one carrier to operate the property of another carrier within the meaning of 49 U.S.C. § 11343(a)(2).

8. The operation of the leased lines by NES could arguably constitute the provision of transportation over or by

means of an additional railroad line by NES within the meaning of 49 U.S.C. § 10901(a)(4). The substitution of NES for B&M as the carrier operating the leased lines, at least with respect to most rail customers, might be construed as a discontinuance of such operations, at least on a temporary basis, by B&M within the meaning of 49 U.S.C. § 10903.

9. Although there is currently no competition between B&M and NES for rail traffic on the leased lines, the arrangements under the Lease Agreement might arguably be construed as a division of revenues or services on the leased lines so as to constitute a pooling agreement within the meaning of 49 U.S.C. § 11342.

IV. Bases for Exemption

10. Pursuant to 49 U.S.C. § 10505(a), the Commission is required to exempt a transaction when it finds that application of a provision of Subtitle IV of Title 49 of the United States Code is not necessary to carry out the transportation policy of 49 U.S.C. § 10101a and either the transaction is of limited scope or the application of a provision of Subtitle IV is not needed to protect shippers from the abuse of market power.

11. Approval or regulation of the transactions contemplated by the Lease Agreement is not necessary in order to carry out any aspect of the transportation policy stated in 49 U.S.C. § 10101a. Moreover, exemption of the transactions would promote several of the policies of 49 U.S.C. § 10101a by minimizing the need for regulatory control over the rail transportation system,

expediting decisions where regulation is not necessary and reducing regulatory barriers to entry into rail transportation markets.

12. The transaction is of limited scope. The total length of the lines to be leased to NES is approximately 27 miles. After implementation of the Lease Agreement, approximately 27 rail customers will be served, and approximately 2,000 carloads annually will be originated or terminated, by NES rather than B&M. Thus, relatively few miles of line, a small number of rail customers and an insignificant number of carloads will be affected by the transaction.

13. Implementation of the transaction will not pose any danger of any abuse of market power. The Lease Agreement will not adversely affect the quality of rail service on the leased lines and will not alter the competitive alternatives presently available to any rail customers served by the lines to be leased.

14. NES has advised B&M that NES is ready, willing and able to provide responsive connecting service over the leased lines and that NES is fully committed to maintain the quality of service that has existed. NES has stated that it will encourage increased use of the leased lines by existing shippers and that it will aggressively seek out new sources of traffic and encourage customers to locate on the leased lines. Such efforts will contribute to the long-term viability of the leased lines in the interests of all parties concerned.

WHEREFORE, B&M and NES respectfully request the Commission to exempt, pursuant to 49 U.S.C. § 10505, the transactions

described above from any prior approval which may be required under Subtitle IV of Title 49 of the United States Code.

Respectfully submitted,

By James E. Howard
James E. Howard

KIRKPATRICK & LOCKHART
One Boston Place
Suite 3210
Boston, MA 02108

Attorney for Boston and Maine
Corporation

By Keith G. O'Brien

WHEELER AND WHEELER
1729 H Street, N. W.
Washington, D. C. 20006

Attorney for New England
Southern Railroad Co., Inc.

Dated: January 24, 1985

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease Agreement") dated as of this 14th day of January, 1985, to be effective as of the Effective Date (as defined in Article XII below), by and between BOSTON AND MAINE CORPORATION, a Delaware corporation ("B&M"), and NEW ENGLAND SOUTHERN RAILROAD CO., INC., a Nevada corporation ("NES").

W I T N E S S E T H:

WHEREAS, B&M operates a line of railroad from Manchester, New Hampshire to Penacook, New Hampshire and beyond to White River Junction, Vermont; and

WHEREAS, NES operates a line of railroad from Lincoln, New Hampshire to Concord, New Hampshire, where it interchanges traffic with B&M; and

WHEREAS, B&M and NES desire to enter into an arrangement pursuant to which B&M will lease to NES and NES will operate over the line of railroad between Penacook and Manchester;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises and covenants set forth herein and intending to be legally bound, hereby agree as follows:

I. LEASE

1.01 B&M hereby leases to NES, and grants to NES the right to use, operate over and provide rail service on, beginning as of the Effective Date (as defined below) of this Lease Agreement and during the term of this Lease Agreement, subject to the provisions of this Lease Agreement, the following lines of railroad and tracks and facilities of B&M: the portion of the line of railroad known as the New Hampshire main line from milepost B80.68 at Penacook, New Hampshire to milepost B56.00 at Manchester, New Hampshire; the portion of the line of railroad known as the Concord-Lincoln branch line from the switch to the New Hampshire main line at milepost B73.72 to milepost 1.17 (valuation station 56+75); the portion of the former Claremont and Concord Railroad line from the switch to the New Hampshire main line at valuation station 1839+42.15 to valuation station 41+98; and one track for interchange purposes in the B&M yard at Manchester, New Hampshire, as shown in red on the map attached hereto as Exhibit A. NES shall be the lessee of and have the right to use and operate such lines of railroad and such appurtenant facilities, including tracks, bridges, culverts, signals, fences and buildings, as may be required to enable NES to perform its responsibilities and duties under this Lease

Agreement (but excluding such buildings, structures and other facilities as are not so required by NES and excluding such real property as may be outside a thirty (30) foot wide corridor which extends fifteen (15) feet from the centerline of such lines of railroad or outside an eighteen (18) foot wide corridor which extends nine (9) feet from the centerline of any side tracks, spur tracks and sidings and any buildings, structures or other facilities not so required by NES and located on such real property; provided, however, that nothing in this parenthetical phrase shall be deemed to exclude any buildings, structures or other facilities required to enable NES to perform its duties and responsibilities under this Lease Agreement, even if such buildings, structures or other facilities are located outside such thirty (30) or eighteen (18) foot wide corridors), all of which shall be referred to in this Lease Agreement as the "Leased Line". B&M hereby grants to NES, beginning as of the Effective Date and during the term of this Lease Agreement, subject to the provisions of this Lease Agreement, the right to use the running track shown in green on Exhibit A in order to have access to the yard track at the B&M yard at Manchester referred to above.

1.02 During the term of this Lease Agreement, B&M hereby reserves the right to have access to and to use the

Leased Line (a) to operate its trains and to provide rail service in accordance with Section 2.01, Section 2.04 and Section 6.03 below and (b) to perform such maintenance responsibilities with respect to the Leased Line as are imposed upon B&M by this Lease Agreement.

1.03 Notwithstanding any other provision of this Lease Agreement, B&M shall have the right, and NES hereby waives any right or claim, (a) to enter into, terminate, extend, renew or otherwise act with respect to any leases, easements, licenses or other such agreements (except sidetrack agreements and private crossing agreements other than the sidetrack agreement with Public Service of New Hampshire, referred to below) affecting the Leased Line, (b) to collect and receive, for the account of B&M, any rents or other payments in respect of any such leases, easements, licenses or other such agreements, whether in effect as of the Effective Date or entered into thereafter and (c) to sell, retire or otherwise dispose of any property on, or portion of, the Leased Line which may, in the opinion of B&M, no longer be necessary and to collect and retain, for the account of B&M, any proceeds from any such sale, retirement or other disposition; provided, however, that NES shall be entitled to collect and retain, for its own account, any personal property recovered or proceeds

6257

received incidental to any maintenance performed by NES on the New Hampshire main line between Penacook and mile post B71.37 at Bow Junction, on the portion of the former Claremont and Concord Railroad line from the switch to the New Hampshire main line at valuation station 1839+42.15 to valuation station 41+98 or on the portion of the line of railroad known as the Concord-Lincoln branch line from the switch to the New Hampshire main line at milepost B73.72 to milepost 1.17 (valuation station 56+75) (all of which shall hereinafter be referred to as the "North End") pursuant to this Lease Agreement. With the exception of the sidetrack agreement between B&M and Public Service of New Hampshire, involving a sidetrack at Bow, New Hampshire and identified as B&M contract 57470, which B&M shall retain, B&M hereby assigns to NES all sidetrack agreements and private vehicular crossing agreements affecting the Leased Line. NES shall have the right to enter into additional sidetrack agreements or private crossing agreements with respect to the Leased Line, subject, however, to the prior written consent of B&M, and to collect and receive for its own account any payments in respect of such agreements.

1.04 NES may, at its sole cost and expense, undertake such improvements, additions, betterments or alterations of the North End as it may deem to be necessary or

desirable; provided, however, that no such improvements, additions, betterments or alterations shall be undertaken without the express prior written consent of B&M, which consent shall not be unreasonably withheld. Any such improvements, additions, betterments or alterations shall become the property of B&M and shall not be removed by NES at the termination of this Lease Agreement.

II. OPERATION OF LEASED LINE

2.01 During the term and subject to the terms and conditions of this Lease Agreement, NES shall provide common carrier rail service to any customer located on or served by the Leased Line as of the Effective Date and to any customer which becomes located on or served by the Leased Line subsequent to the Effective Date and which is not served by B&M in accordance with Section 2.04 below; provided, however, that B&M shall continue to provide exclusive service pursuant to Section 2.04 below to the electric generating plant of Public Service of New Hampshire located on the portion of the Leased Line between mile post B71.37 at Bow Junction and Manchester (hereinafter referred to as the "South End") at Bow, New Hampshire. Such service by NES shall be equal in all respects, including frequency, reliability and speed, to the service provided as of the Effective Date by B&M or such other manner

of service as may be warranted by traffic levels and operating conditions as they may exist from time to time. NES shall provide all locomotives, personnel and any other equipment necessary in order to provide such service.

2.02 The North End shall be operated under the rules and regulations of NES; provided, however, that in the event that B&M exercises its right to operate over the North End pursuant to Section 6.03 below or in the event that B&M elects to serve any new customer on the North End pursuant to Section 2.04 below, the North End shall be operated under the rules and regulations of B&M.

2.03 The South End shall be operated under the rules and regulations of B&M, which shall be responsible for the control and dispatch of trains. All employees of NES who operate its trains or equipment over the South End shall be qualified under B&M rules and shall have satisfactorily passed an examination by B&M officials.

2.04 Notwithstanding any other provision of this Lease Agreement, B&M shall continue to have the exclusive right to serve for its own account the electric generating plant of Public Service of New Hampshire located on the South End at Bow, New Hampshire. Notwithstanding any other provision of

this Lease Agreement, B&M shall have, at its sole option, the right to serve for its own account any customer which becomes located on or served by the Leased Line subsequent to the Effective Date and which advises B&M and NES that it expects to ship or receive a total of at least seven hundred fifty (750) carloads annually. In the event that B&M does not elect to serve any such new customer on the Leased Line, NES shall provide service in accordance with Section 2.01 above. In the event that, subsequent to the Effective Date, a new customer becomes located on or served by the Leased Line and such new customer advises B&M and NES that it expects to ship or receive a total of fifteen (15) or more carloads each time service is required, B&M and NES shall attempt to agree upon joint routes and rates with respect to such traffic. If routes and rates acceptable to B&M cannot be agreed upon, B&M shall have the right, at its sole option, to serve such new customer for its own account. In the event that B&M exercises the right pursuant to this Section 2.04 to serve any such new customer (a) located on or served by the North End, B&M shall pay such portion of the expenses to maintain the North End as the annual gross ton miles handled by B&M on the North End bear to the total annual gross ton miles on the North End and (b) located on the Leased Line, NES shall have no responsibility (i) for the cost of any improvements or facilities required to provide

such service or (ii) to provide such service unless it agrees to do so.

2.05 Traffic which originates or terminates on the Leased Line (other than traffic which is handled by B&M pursuant to Section 2.04 above) shall be interchanged at Manchester. ~~NES and B&M shall establish joint routes and rates with respect to such traffic.~~ For each carload so interchanged up to two thousand three hundred (2,300) carloads in any calendar year, NES shall receive a fixed division equal to twenty three (23) per cent of the B&M revenue for each such carload. For each carload so interchanged in excess of two thousand three hundred (2,300) carloads in any calendar year, NES shall receive a fixed division equal to fifteen (15) per cent of the B&M revenue for each such carload. All car hire charges and demurrage with respect to traffic on the Leased Line shall be for the account of NES, except that NES shall not be responsible for car hire payments with respect to cars of B&M, Maine Central Railroad Company, Delaware and Hudson Railway Company, any subsidiary of any of them or any other subsidiary of Guilford Transportation Industries, Inc. or with respect to cars moving in B&M trains pursuant to Section 2.04 above.

2.06 With respect to traffic which originates or terminates on the Leased Line (other than traffic which is handled by B&M for its own account pursuant to Section 2.04 above), NES shall be responsible for the notification of customers, the collection of demurrage, the maintenance of car accounting and other records pertaining to such traffic and the settlement of interline car accounts. B&M shall be responsible for the preparation of waybills, the billing of customers, the collection of bills and the settlement of interline accounts for freight and for loss and damage.

2.07 B&M shall remit payments to NES for freight charges for local or received traffic as promptly as practicable but in no event later than the last day of the calendar month following the month in which the service relating to such charges was provided. B&M shall remit payment to NES for freight charges for forwarded traffic within ten (10) days after the receipt by B&M of the interline settlement from the settling carrier for the service relating to such charges. Any other amounts due from either party to the other in accordance with this Lease Agreement shall be paid within ten (10) days after the receipt by B&M of the interline settlement from the settling carrier for the service relating to such charges. Any other amounts due from either party to

the other shall be paid within thirty (30) days after a bill has been rendered.

2.08 NES and B&M shall each perform its respective duties and responsibilities pursuant to this Lease Agreement in compliance with Federal, state and local laws and administrative regulations relating to such performance.

2.09 NES shall bear and be responsible for all costs of its operation of the Leased Line.

2.10 Each party shall have the right, during normal business hours, to inspect the books and records of the other party relating to this Lease Agreement.

III. MAINTENANCE

3.01 NES shall, at its own expense, maintain the North End in good condition and repair so that rail operations can be conducted as required by this Lease Agreement and as warranted by traffic levels in a safe, efficient and economical manner and in compliance with all federal and state laws and regulations; provided, however, that in no event shall the condition of the line be less than the Federal Railroad Administration Class I standard. In the event that the standards of the Federal Railroad Administration are amended,

the parties shall attempt in good faith to agree upon a mutually acceptable standard of maintenance in light of any such amendment and other relevant factors such as the then current traffic levels and service requirements. Any property or materials used by NES to replace or repair any property or materials in the North End shall be of equal or better quality compared to the property or materials so replaced or repaired.

3.02 B&M shall, at its own expense, (a) maintain such buildings, structures and other facilities located on or appurtenant to the Leased Line as are not required by NES to enable it to perform its duties and responsibilities under this Lease Agreement and (b) maintain the South End, the running track connection and the interchange track shown in red on Exhibit A (or such other interchange track as the parties may designate) in good condition and repair so that rail operations can be conducted as required by this Lease Agreement and as warranted by traffic levels in a safe, efficient and economical manner and in compliance with all federal and state laws and regulations.

3.03 B&M shall provide NES with all documents necessary for NES to maintain the North End, including but not limited to valuation maps, track charts, maintenance and production records, structural plans for bridges, signal plans

and schematic diagrams for at-grade road crossings. B&M shall cooperate in providing relevant data to NES relating to customers to be served by NES.

IV. LIABILITY AND INSURANCE

4.01 With respect to operations, incidents or activities on the Leased Line involving only one of the parties or the negligence of only one of the parties, each such party shall be responsible for or bear, and shall indemnify and save harmless the other party and its officers, directors, employees and agents from and against, all liabilities, claims, damages, charges, costs or expenses of whatever nature, including without limitation damage to any equipment or lading and costs or expenses associated with injury to or the death of any persons, including damage to any property of the other party or injury to or death of any employee or agent of the other party.

4.02 With respect to operations, incidents or activities on the Leased Line involving both B&M and NES or the negligence of both B&M and NES, each party shall be responsible for or bear one hundred (100) percent of its own damages, charges, costs or expenses of whatever nature and fifty (50) percent of the liabilities, claims, damages, charges, costs or expenses of whatever nature of any third parties and of any

items which are common to the parties hereto, including but not limited to costs to repair tracks and clear wrecks.

4.03 At all times during the term of this Lease Agreement, NES shall maintain, at its sole expense, such comprehensive railroad liability policy or policies of insurance, in form and from companies approved by B&M, providing full insurance coverage against any and all claims, losses, costs, damages or expenses on account of injury (including death) to persons or damage to property, including employees and property of B&M, as to which NES has assumed responsibility pursuant to Sections 4.01 and 4.02 above. Subject to self-insured deductible amounts of Twenty Five Thousand Dollars (\$25,000), such policy or policies shall have minimum limits of Three Million Dollars (\$3,000,000) in any one occurrence. Such policy or policies shall refer to the assumption of liability pursuant to this Lease Agreement and shall provide that B&M shall be notified of cancellation or any restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment.

V. TAXES

5.01 B&M (a) shall file any returns or reports required by New Hampshire in respect of real property,

franchise, corporate, capital stock or income taxes relating to the Leased Line and (b) shall pay (i) any such taxes assessed on the basis of the earnings or income of B&M in respect of the Leased Line and (ii) any such real property taxes.

5.02 NES shall cooperate with and provide information to B&M to permit B&M to file any returns or reports required by New Hampshire in respect of franchise, corporate, capital stock or income taxes relating to the Leased Line or the operation of the Leased Line, and NES shall pay any such taxes assessed on the basis of the earnings or income of NES in respect of the Leased Line or on the basis of the operation or use of the Leased Line by NES.

5.03 Nothing in this Article V shall require either party to pay any tax which is being contested in good faith.

VI. DEFAULTS BY NES AND REMEDIES OF B&M

6.01 The following events or occurrences shall constitute defaults by NES under this Lease Agreement:

(a) the failure or inability of NES for a period of five (5) consecutive days to provide either service which is consistent with the standard required by Section 2.01 above or any service at all on the Leased Line, except

when such failure or inability is caused by an event or occurrence which is not attributable, directly or indirectly, to any act or failure to act by NES;

(b) the failure to maintain the North End in accordance with the standard established in Section 3.01 above;

(c) the failure to pay any of the costs and expenses to be paid by NES pursuant to this Lease Agreement (except that NES shall have the right to offset any delinquent amounts which may be owed by B&M to NES pursuant to this Lease Agreement for purposes of determining whether NES has failed to pay B&M); or

(d) the failure to comply with or to perform any other covenant or agreement undertaken by NES pursuant to this Lease Agreement.

6.02 In the event that B&M gives NES written notice of the occurrence of any default under this Lease Agreement and NES does not cure any such default within twenty (20) days after such notice, this Lease Agreement shall terminate and be of no further force or effect.

6.03 Notwithstanding any other provision of this Lease Agreement, in the event that NES fails or is unable to provide service which is consistent with the standard required by Section 2.01 above, B&M may, at its option, and whether or not any such failure or inability constitutes a default pursuant to Section 6.02(a) above, provide service on the Leased Line itself or through a carrier it designates until such time as NES resumes the provision of service which is consistent with the standard required by Section 2.01 above.

VII. TERM

Unless terminated earlier pursuant to Section 6.02 above, the initial term of this Lease Agreement shall be for a period of ten (10) years following the Effective Date. This Lease Agreement shall continue in effect thereafter until it is terminated pursuant to Section 6.02 above or by either party giving the other party three (3) months' prior written notice of its intention to so terminate this Lease Agreement.

VIII. TERMINATION OF 1982 AGREEMENT

The Agreement dated September 20, 1982, by and between NES and Robert W. Meserve and Benjamin H. Lacy, Trustees of the property of Boston and Maine Corporation, Debtor shall be terminated as of the Effective Date of this

Lease Agreement. Beginning as of the Effective Date, NES and B&M shall interchange traffic which originates or terminates on the line operated by NES between Concord and Lincoln at Manchester, and NES shall receive a fixed division equal to thirty seven (37) per cent of the B&M revenue for each carload of such traffic.

IX. NOTICES

All notices, requests and demands to or upon the parties hereto shall be deemed to have been given or made when deposited in the United States mails, postage prepaid, addressed as follows:

To:

**President
New England Southern Railroad Co., Inc.
244 North Main Street
Concord, New Hampshire 03301**

with a copy to:

**William V. DePaulo
Wheeler and Wheeler
1729 H Street, N.W.
Washington, D.C. 20006**

To:

**Vice President - Law
Boston and Maine Corporation
Iron Horse Park
N. Billerica, Massachusetts 01862**

with copies to:

James E. Howard, Esq.
Kirkpatrick & Lockhart
One Boston Place
Suite 3210
Boston, Massachusetts 02108

and

Guilford Transportation Industries, Inc.
171 Orange Street
New Haven, Connecticut 06510

X. NO WAIVER; CUMULATIVE REMEDIES

No failure to exercise, and no delay in exercising on the part of either party of, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power, or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the parties hereunder are cumulative and not exclusive of any rights or remedies provided by law, and all such rights and remedies may be exercised singly or concurrently.

XI. ASSIGNMENT

This Lease Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. NES shall not assign this Lease Agreement or any portion hereof except upon the prior, written consent of B&M.

XII. CONDITIONS PRECEDENT AND EFFECTIVE DATE

The obligation of B&M to consummate the transactions contemplated by this Lease Agreement and the effectiveness of this Lease Agreement are subject to the satisfaction or waiver of the following conditions:

(a) This Lease Agreement and the transactions contemplated hereby shall have been approved or exempted, by orders which have become final, by the Interstate Commerce Commission and any other regulatory agency which may have jurisdiction;

(b) B&M shall have complied with any notice requirements or any other provisions relating to any labor protective conditions which may be imposed by the Interstate Commerce Commission or any other regulatory agency in connection with the approval or exemption of this Lease Agreement or the transactions contemplated hereby; and

(c) Northern Railroad shall have provided B&M such consent or approval as B&M may deem necessary or desirable with respect to those aspects of this Lease Agreement and the Leased Line relating to property owned by Northern Railroad and leased to B&M.

This Lease Agreement shall become effective on the "Effective Date", which shall be a date mutually agreed upon by the parties and which shall not be more than thirty (30) days after the satisfaction or waiver of the last to be satisfied or waived of the foregoing conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed and delivered as of the day and year first above written, to be effective as of the Effective Date.

BOSTON AND MAINE CORPORATION

Attest:

R. E. Roy

By Daniel A. Fitch

NEW ENGLAND SOUTHERN RAILROAD
CO., INC.

Attest:

Katherine M. McCade

By

Arthur H. Thomas

EXHIBIT B

9226 0126 2000 15772 99917

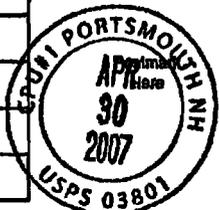
U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$.39
Certified Fee	2.90
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.64

Sent to: Peter Dearness
 Street, Apt. No. or PO Box No.: NES, 8 Water St
 City, State, ZIP+4: Concord NH 03301

PS Form 3800, August 2006 See Reverse for Instructions



PAN AM RAILWAYS
 1000 HORSER PARK
 MILLERICA, MA 01862



April 27, 2007

No. 7006 2150 0002 9210 3978

Mr. Peter Dearness, President
 New England Southern Railroad Co., Inc.
 8 Water Street
 Concord, New Hampshire 03301

RE: Notice of Intent to Terminate Lease Agreement

Dear Mr. Dearness:

I would like to take this opportunity to contact you regarding the Lease Agreement entered between New England Southern Railroad Co., Inc. ("NES") and Boston-Maine Corporation ("B&M"), dated January 24, 1985, which grants NES the right to use, operate, and provide rail service on a portion of B&M's railroad (described on page 2 of the Lease). This letter is being sent to notify NES of B&M's intent to terminate the Lease Agreement, per Section VII of said agreement, and B&M's intent to operate the Leased line under its own operations. In accordance with Section VII, this Lease Agreement will terminate 3 (three) months from NES' receipt of this letter. Accordingly, B&M requests NES file a Notice of Discontinuance with the Surface Transportation Board.

Sincerely,

Roger Bergeron
 Vice President, Special Projects
 Pan Am Railways, Inc.
 978-663-6918

cc: Patricia A Morris, Corporate Counsel
 Robert Culliford, General Counsel and Senior Vice President



PAN AM RAILWAYS
IRON HORSE PARK
NO. BILLERICA, MA 01862



COPY

July 17, 2007

Delivered via Federal Express

Mr. Peter Dearness, President
New England Southern Railroad Co., Inc.
8 Water Street
Concord, New Hampshire 03301

RE: Termination of Lease Agreement, August 1, 2007

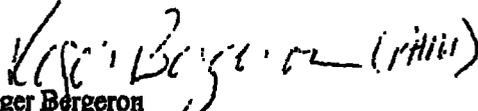
Dear Mr. Dearness:

This letter is in reference to the termination of the New England Southern ("NES") lease agreement and the subsequent plan to transition the rail line's operating services from NES to Boston & Maine ("B&M").

In accordance with our April 27, 2007 letter and Section VII of the Lease, please confirm that you will cease operations along the leased line on July 31, 2007. Whereas B&M desires seamless transition for our customers, NES and B&M must develop a transition plan to address several issues, including but not limited to: the exact date of the transition, the condition of the rail line and adjacent property, formal notification of the transition to the customers, any existing contracts and obligations concerning the property and/or rail line, and the filing of the notice of discontinuance in accordance with Surface Transportation Board's regulations. As time is of the essence, I suggest meeting later this week at a location convenient for you.

As always, B&M appreciates your cooperation in this matter and ensuring a smooth transition for all customers. Please contact me as soon as practical to set up this meeting.

Sincerely,


Roger Bergeron
Vice President, Special Projects
Pan Am Railways, Inc.
978-663-6918

July 17, 2007

cc: Patricia A Morris, Corporate Counsel
Robert Culliford, General Counsel and Senior Vice President

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**DOCKET NO. AB-32
(Sub. No. 100)**

**BOSTON AND MAINE RAILROAD &
SPRINGFIELD TERMINAL RAILWAY
COMPANY- ADVERSE DISCONTINUANCE
OF OPERATING AUTHORITY- NEW
ENGLAND SOUTHERN RAILROAD CO., INC.**

DRAFT FEDERAL REGISTER NOTICE

STB No. AB-32 (Sub-No. 100)

Notice of Application for Adverse Discontinuance of Service

On or about (date application was filed), Boston-Maine Corporation and Springfield Terminal (collectively "Pan Am Railways") filed with the Surface Transportation Board, Washington, D.C. 20423, an application for permission for the adverse discontinuance of service on a line of railroad known as the New Hampshire Main Line extending from (1) railroad milepost B80.68 at Penacook, New Hampshire to milepost B56.00 at Manchester, New Hampshire; (2) the portion of the former Claremont and Concord Railroad line from the switch to the New Hampshire main line valuation station 41+98; and (3) one track for interchange purposes in the B&M yard at Manchester, New Hampshire (hereinafter "Subject Line") a distance of approximately 27 miles, in said New Hampshire. The line includes the stations of (list all stations on the line in order of milepost number, indicating milepost location) and traverses through United States Postal Service ZIP Codes: 03101, 03106, 03301, 03303 and 03304.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The applicant's entire case for adverse discontinuance was filed with the Application and the attachments thereto.

The interest of railroad employees will be protected as required by 49 U.S.C. 10903(b)(2).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed adverse discontinuance or protests (including the protestant's entire opposition case), within 45 days after the application is filed.

All interested persons should be aware that this application is for Adverse Discontinuance of Operations on the Subject Line and will not result in the abandonment of existing operations. Pan Am Railways fully intends on conducting operations on said line itself, and therefore, the usual situation following an abandonment of rail service and salvage of the line, where the line may be suitable for other public use, including interim trail use, will not apply. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

(i) *[Not Applicable]* An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) *[Not Applicable]* A request for a public use condition under 49 U.S.C. 10905; and

(iv) *[Not Applicable]* A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and §1152.29.

Parties seeking information concerning the filing of protests should refer to 49 CFR §1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB-32 (Sub-No. 100) and should be filed with the Secretary, Surface Transportation Board (Board), Washington, DC 20423, no later than August 3, 2009. Interested persons may file a written comment or protest with the Board to become a party to this adverse discontinuance proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (Michael Q. Geary, Pan Am Railways, Corporate Counsel, 1700 Iron Horse Park, No. Billerica, MA 01877, (978) 663-1029. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be adversely discontinued will not be available for subsidy or sale for continued rail use, if the Board decides to permit the discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement shall therefore be approved under 49 U.S.C. 10904.

Persons seeking further information concerning abandonment/discontinuance procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

[Not Applicable] An environmental assessment (EA) (or environmental impact statement (EIS)), if necessary, prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these discontinuance proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

EXHIBIT D

Counsel for Connecting Carriers:

Keith G. O'Brien, Esq.
Baker & Miller, PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037

Martin P. Honigberg, Esq.
Sulloway & Hollis P.L.L.C.
9 Capitol Street
Concord, NH 03301

Line Shippers:

Blue Scal Feeds
520 Hall Street
Bow, NH 03304

Ciment Quebec
7 Johnson Road
Bow, NH 03304

North Pacific (Saxonville)
287 So. Main
Concord, NH 03301

Public Service of New Hampshire
P.O. Box 330
Manchester, NH 03105

Schnitzer Steel Industries
25 Sandquist Street
Concord, NH 03301

Ensio Resources
97 River Road
Bow, NH 03304

Fortek
1400 Iron Horse Park
North Billerica, MA 01862

All-State Asphalt
P.O. Box 91
Sunderland, MA 01375

Concord Crop Center
6 So. Commercial
Concord, NH 03301

Coastal Forest Products
451 South River Road
Bedford, NH 03110

Innovative Paper Technologies
P.O. Box 739
One Paper Trail
Tilton, NH 03276

State and Federal Agencies

U.S Railroad Retirement Board
844 North Rush Street
Chicago, IL 60611-2092

Headquarters of Labor Organizations Representing Employees

Mr. Michael D. Twombly
General Chairman, BLET/IBT
70 High Street
Andover, MA 01810

Mr. Joseph Novak
Asst. general Chairman, IBEW
1698 State Highway 7
Troy, NY 12180

Mr. John Lacey
General Chairman, IAMAW
95 Tyler Street
East Haven, CT 06512
Mr. David Fancher
Asst. Intl. Rep., BRCD/TCIU
21 Azalea Drive
Apalachin, NY 13732

Mr. Bradley Winter
General Chairman, BMWE/IBT
P.O. Box 89
Danvers, MA 01923
Mr. William Keebler
General Chairman, BRS
906 Cedar Lane
Norristown, PA 19401

Mr. Wayne Mattice
General Chairman, IFPTE
89 Broadway
Concord, NH 03301

Mr. Paul Korcz
General Chairman, SMWIA
24 Columbine Avenue
Merrick, NY 11566

Mr. William Kelaher
Asst. Intl. Rep., TCIU
38 Bungalow Lane
West Haven, CT 06516

Mr. Gregory Casey
General Chairman, UTU
57 Park Street, Rear
P.O. Box 404
Framingham, MA 01701

Mr. Dan Hamilton
International Representative, IBBBF
2604 Fields Avenue
Flatwoods, KY 41139

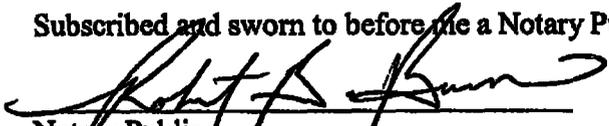
§ 1152.20(a)(4) – Newspaper Publication. A Notice of Intent (attached hereto) was published once each week for three consecutive weeks in a newspaper generally circulated in the counties as follows:

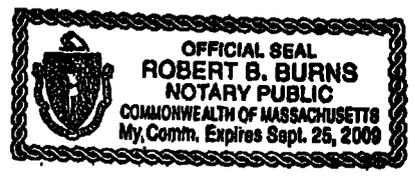
<u>Newspaper</u>	<u>County</u>	<u>Dates Published</u>
<u>New Hampshire Union Leader</u>	Hillsborough & Merrimack	April 22, 2009 April 29, 2009 May 6, 2009

Dated this 19, day of June, 2009.


Michael Geary, Esq.

Subscribed and sworn to before me a Notary Public this 17TH, day of June, 2009.


Notary Public:
My Commission Expires: 9-25-09



CERTIFICATE OF SERVICE

Stephen G. LaBonte, Esq.
Asst. Atty. General
Transportation & Construction Dept. (NHDOT)
33 Capitol Street
Concord, NH 03301-6397

Keith O'Brien, Esq.
Baker & Miller, PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037

Martin P. Honigberg, Esq.
Sulloway & Hollis P.L.L.C.
9 Capitol Street
Concord, NH 03301

Blue Seal Feeds
520 Hall Street
Bow, NH 03304

Ciment Quebec
7 Johnson Road
Bow, NH 03304

North Pacific (Saxonville)
287 So. Main
Concord, NH 03301

Public Service of New Hampshire
P.O. Box 330
Manchester, NH 03105

Schnitzer Steel Industries
25 Sandquist Street
Concord, NH 03301

Ensio Resources
97 River Road
Bow, NH 03304

Fortek
1400 Iron Horse Park
North Billerica, MA 01862

All-State Asphalt
P.O. Box 91
Sunderland, MA 01375

Concord Crop Center
6 So. Commercial
Concord, NH 03301

Coastal Forest Products
451 South River Road
Bedford, NH 03110

Innovative Paper Technologies
P.O. Box 739
One Paper Trail
Tilton, NH 03276

Dated this 19th, day of June, 2009.



Michael Geary, Esq.

Legal Notice V

STB No. AB 32 (Sub-No. 100) Notice of Intent to Abandon or to Discontinue Service

Boston and Maine Corporation (the "B&M") and the Springfield Terminal Railway Company ("ST") hereby gives notice that on or about May 15, 2008 it intends to file with the Surface Transportation Board, Washington, D.C. 20423, an application for permission for the adverse discontinuance of operating authority of New England Southern Railroad Company, Inc. on a line of railroad known as the New Hampshire main line extending from railroad milepost near B80.68 at Penacook, New Hampshire to milepost B56.00 at Manchester, New Hampshire; (2) the portion of the former Claremont and Concord Railroad line from the switch to the New Hampshire main line at valuation station 1839+42.15 to valuation station 41+98; and (3) one track for interchange purposes in the B&M yard at Manchester, New Hampshire (the "Subject Line") which traverses through United States Postal Service ZIP Codes: 03101, 03301 and 03308, an approximate distance of 27 miles, in Hillsborough and Merrimack Counties, New Hampshire.

The reason(s) for the proposed adverse discontinuance is to resume possession and operation of the line by B&M and ST. Based on information in our possession, the line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by all applicable laws and regulations.

The application will include the applicant's entire case for discontinuance. Any interested person, after the application is filed on or about May 15, 2008, may file with the Surface Transportation Board written comments concerning the proposed discontinuance or protests to it. These filings are due 45 days from the date of filing of the application.

All interested persons should know that following any discontinuance of operations, B&M and ST shall operate the provide service to its shippers. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

Protests must contain that party's entire case in opposition (case in chief) including the following:

(1) Protestant's name, address and business.

(2) A statement describing protestant's interest in the proceeding including:

(i) A description of protestant's use of the line;

(ii) If protestant does not use the line, information concerning the group or public interest it represents; and

(iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.

(3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the facts).

(4) Any rebuttal of material submitted by applicant.

Written comments and protests will be considered by the Board in determining what disposition to make of the application.

Noti

The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed discontinuance should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests should indicate the proceeding designation STB No. AB 32 (Sub-No. 100) and must be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than on or about July 27, 2008. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant Michael Geary, 1700 Iron Horse Park, No. Billerica MA 01862. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

A copy of the application will be available for public inspection on or after May 16, 2008 at 1700 Iron Horse Park, No. Billerica, MA 01862. The carrier shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

(U.L. - Apr. 22, 20; May 6)

EXHIBIT E

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**DOCKET NO. AB-32
(Sub. No. 100)**

**BOSTON AND MAINE RAILROAD &
SPRINGFIELD TERMINAL RAILWAY
COMPANY- ADVERSE DISCONTINUANCE
OF OPERATING AUTHORITY- NEW
ENGLAND SOUTHERN RAILROAD CO., INC.**

VERIFIED STATEMENT OF ROGER BERGERON

Roger Bergeron, being duly sworn, deposes and states as follows.

1. My name is Roger Bergeron. My business address is 1700 Iron Horse Park, North Billerica, Massachusetts 01862. I am an employee of the applicant for 39 years and am currently the vice president of special projects. I submit this statement to assist the Board and the public with a proper understanding of the applicant's lease agreement with New England Southern Railroad on or about January 14, 1985 identified in the application for adverse discontinuance of operating authority.
2. That I am familiar with the lease agreement dated January 14, 1985 by and between Boston and Maine Corporation and New England Southern Railroad Co., Inc.
3. The Boston and Maine Corporation entered into a Lease Agreement with New England Southern Railroad on or about January 14, 1985 to "operate and provide service on the leased lines, while reserving certain rights to the Boston and Maine Corporation that were subsequently assumed by Springfield Terminal Railway Company.

4. The only rights granted to New England Southern Railroad under the Lease are that of a lessee. Boston and Maine Corporation did not convey ownership in the Line nor its common carrier rights and obligations to New England Southern Railroad, nor was Boston and Maine Corporation evidence such an intent in the Lease.

5. The original ten year term of the lease has long since expired, New England Southern Railroad operations continued over the Subject Lines with no discord pursuant to Section VII of the Lease.

6. Earlier this decade numerous disputes arose between New England Southern Railroad and Pan Am relating to payments of invoices and the condition of the Subject Line, disputes which caused the relationship to deteriorate significantly and leading Pan Am to provided written notice of termination of the Lease on or about April 27, 2007, effective August 1, 2007.

7. Upon serving said notification that Pan Am intended to resume operation of the Subject Line, New England Southern Railroad informed that it would not voluntarily surrender its operating authority over the Subject Line and began litigation against Pan Am in Federal Court and then in New Hampshire Superior Court. The complaint filed by New England Southern Railroad and the answer and counterclaims of Pan Am are attached hereto as Exhibit F.

8. Notwithstanding this contentious relationship and ongoing litigation, Pan Am has met with New England Southern Railroad to attempt to resolve the issues between them, but so far New England Southern had nevertheless refused to voluntarily discontinue the Lease, utilizing Board jurisdiction as leverage to achieve an advantageous settlement.

VERIFICATION

Commonwealth of Massachusetts

Middlesex County

I, Roger Bergeron, being duly sworn according to law, hereby depose and state that I am authorized to make this Verification, that I have read the foregoing document, and that I know the facts asserted therein are true and accurate as stated, to the best of my knowledge, information and belief.

Roger D. Bergeron

EXHIBIT F

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. _____

New England Southern Railroad Co.,
Plaintiff

v.

Boston and Maine Corporation, Inc.
and
Springfield Terminal Railway, Co., Inc.
and
Pan Am Railways, Inc.
Defendants

DECLARATION

NATURE OF THE CASE

This is an action in which the plaintiff, New England Southern Railroad Co., ("New England Southern") a short-line railroad based in Concord, New Hampshire, seeks to recover damages – including payments due under a lease, attorneys' fees, interest and costs – on account of the defendants' failure to pay the amounts required by the terms of a lease between the parties.

As of November of 2008, according to monthly statements provided by the defendants to the plaintiff, the defendants owed the plaintiff in excess of \$550,000. The defendants have never disputed that they owe the plaintiff its contractual share of the funds collected by the defendants. However, like ten other railroad companies, New England Southern has been forced to bring suit against the defendants to recover what it is undisputedly owed.

THE PARTIES

1. The plaintiff, New England Southern Railroad Co., is a Delaware Corporation with a principal place of business at 8 Water Street, Concord (Merrimack County), New Hampshire, 03301.

2. The defendant, Boston and Maine Corporation, Inc. ("B & M"), is a Delaware Corporation with a principal place of business at Iron Horse Park, North Billerica, Massachusetts 01862.

3. The defendant, Springfield Terminal Railway, Co. Inc. ("Springfield Terminal"), is a Vermont Corporation with a principal place of business at Iron Horse Park, North Billerica, Massachusetts 01862.

4. The defendant, Pan Am Railways ("Pan Am") is a Delaware Corporation with a principal place of business at 14 Aviation Avenue, Portsmouth, New Hampshire 03301. Prior to 2006, Pan Am was known as Guilford Transportation Industries, Inc.

5. Pan Am is the corporate parent of both B & M and Springfield Terminal.

6. On information and belief, B & M and Springfield Terminal are alter egos of Pan Am with common management and control.

JURISDICTION AND VENUE

7. The Court has jurisdiction over the defendants pursuant to RSA 510:4 (1997).

8. This Court has subject matter jurisdiction over this action pursuant to RSA 491:7 (1997).

9. Venue is appropriate in this Court pursuant to RSA 507:9 (1997).

PRIOR PROCEDURAL HISTORY

10. On December 14, 2007, the plaintiff filed a Complaint (which was substantially similar to this Declaration) in the United States District Court for the District of New Hampshire. *See New England Southern Railroad Co. v. Springfield Terminal Railway, Co. et al*, 1:07-cv-00403-JL. The plaintiff alleged federal question subject matter jurisdiction.

11. On February 19, 2008, the defendants brought a motion to dismiss for lack of subject matter jurisdiction arguing that the lawsuit pending in the federal court was “based on state contract law” and “d[id] not raise a federal question at all.”

12. The federal court granted the motion to dismiss for lack of subject matter jurisdiction on September 30, 2008. The plaintiff filed a timely motion to reconsider.

13. After a hearing before Judge Laplante on December 30, 2008, the federal court denied the motion to reconsider. In its written order on the motion (December 31, 2008), the federal court quoted 49 U.S.C. § 10709(c)(2) to suggest that that the plaintiff’s remedy for its contract claim is “an action in an appropriate State court”

14. Thus, in this action, the statute of limitations is tolled as of December 14, 2007. See RSA 508:10 (1997) (“If judgment is rendered against the plaintiff in an action brought within the time limited therefor, or upon a writ of error thereon, and the right of action is not barred by the judgment, a new action may be brought thereon in one year after the judgment”).

BACKGROUND FACTS

Interline/Divisions

15. The plaintiff and one of the defendants, B & M, entered into a lease on or about January 14, 1985 ("Lease"). Under the Lease, New England Southern operates along a portion of the railroad line owned by the defendants ("Leased Line").

16. Under the Lease, New England Southern agreed to provide rail service on the Leased Line and B & M agreed to compensate New England Southern for certain freight moved over the Leased Line.

17. In its simplest terms, New England Southern's locomotive moves freight in both directions between the defendants' rail yard in Manchester, New Hampshire, and customer locations along the Leased Line.

18. The defendants collect the total freight charges from the shippers for that freight and owe New England Southern for the portion of the charges related to the services provided by New England Southern. This division of freight charges is called "Interline" (or "Divisions").

19. To this end, the Lease specifically provided:

- a) That "[t]raffic which originates or terminates on the Leased Line...shall be interchanged in Manchester." (Lease § 2.05);
- b) "For each car load so interchanged up to two thousand three hundred (2,300) carloads in any calendar year, [New England Southern] shall receive a fixed division equal to twenty three percent (23) per cent of the B & M revenue for each such carload." (Lease § 2.05);
- c) "For each car load so interchanged in excess of two thousand three hundred (2,300) carloads in any calendar year, [New England Southern] shall receive a fixed division equal to fifteen percent (15) per cent of the B & M revenue for each such carload." (Lease § 2.05);
- d) "All car hire charges and demurrage with respect to traffic on the Leased Line shall be for the account of [New England Southern], except that [New England Southern] shall not be responsible for car hire payments with respect to cars of B & M, Maine Central Railroad Company, Delaware and Hudson Railway

Company, any subsidiary of any of them or any other subsidiary of Guilford Transportation Industries, Inc. or with respect to cars moving in B & M trains pursuant to [a section of the Lease enumerating rights retained by B & M for certain existing and future customers.]" (Lease § 2.05);

- e) New England Southern "and B & M shall interchange traffic which originates or terminates on the line operated by [New England Southern] between Concord and Lincoln at Manchester, and [New England Southern] shall receive a fixed division equal to thirty seven (37) per cent of the B & M revenue for each carload of such traffic. (Lease VIII).
- f) "B & M shall remit payments to [New England Southern] for freight charges for local or received traffic as promptly as practicable but in no event later than the last day of the calendar month following the month in which the service relating to such charges was provided." (Lease § 2.07);
- g) "B & M shall remit payments to [New England Southern] for freight charges for forwarded traffic within ten (10) days after the receipt by B & M of the interline settlement from the settling carrier for the service relating to such charges." (Lease § 2.07);
- h) "Any other amounts due from either party to the other in accordance with this Lease Agreement shall be paid within ten (10) days after the receipt by B & M of the interline settlement from the settling carrier for the service relating to such charges." (Lease § 2.07);
- i) "Any other amounts due from either party to the other shall be paid within thirty (30) days after a bill has been rendered." (Lease § 2.07).

20. At the direction and control of Pan Am, B & M and Springfield Terminal caused freight traffic to move across the Leased Line such that New England Southern was entitled to payments under the Lease for its portion of the Interline fees.

21. During the term of the Lease, the defendants have provided a monthly accounting to New England Southern of net amounts due to New England Southern. New England Southern has not received any statements from the defendants for any period after October 2008.

22. The defendants have failed to make payments of net amounts due to New England Southern under the Lease.

23. The defendants have not made any payments of amounts due to New England Southern under the Lease since June 2007.

24. Furthermore, the defendants have refused to make such payments upon the demand of New England Southern.

Car Hire Charges

25. Railroads handling rail cars that they do not own regularly pay mileage and per diem rates for the usage of these railcars. The mileage charges and per diem rates are called "Car Hire" charges.

26. The defendants acted as an agent for third party owners of rail cars in collecting and processing amounts New England Southern the third party owners of rail cars.

27. The monthly statements sent by the defendants to New England Southern show a gross amount owed by the defendants to New England Southern for Interline fees and a gross amount due to third party rail car owners as Car Hire charges (being collected by the defendants as the agent for the third party rail car owners). The monthly statements also show a net amount due to New England Southern. The net amount due each month was calculated by reducing the monthly Interline fees due by the monthly Car Hire charges.

28. On multiple occasions, the defendants erroneously calculated the amounts New England Southern owed on its own cars and cars owed by Green Mountain Railroad for Car Hire charges.

29. The defendants used this erroneous calculation to claim that New England Southern owed more in Car Hire charges than it actually did.

30. The defendants used this erroneous Car Hire charge calculation to reduce the amount it otherwise owed New England Southern for Interline fees.

31. Thus, the defendants owe New England Southern the difference between what should have been properly deducted from its Interline fees for Car Hire charges and the amount erroneously deducted by the defendants.

Sidetrack Agreements

32. With the exception of one section of the Leased Line, the Lease between B & M and New England Southern assigned "all sidetrack agreements and private vehicular crossing agreements affecting the Leased Line" ("Sidetrack Agreements") to New England Southern. (Lease § 1.03).

33. Despite the clear language of the Lease, B & M did not assign any Sidetrack Agreements to New England Southern.

34. New England Southern has suffered monetary damages in an unknown amount as a result of the breach of Lease with respect to the Sidetrack Agreements.

New England Southern's Repair and Maintenance of the Leased Line

35. When New England Southern demanded payment from the defendants, the defendants asserted New England Southern had allowed the Leased Line to deteriorate and that the costs to repair the Leased Line would almost equal the amount the defendants owed New England Southern.

36. New England Southern challenged the defendants' January 2008 assessment of the condition of the Leased Line. After a subsequent joint inspection by representatives of both New England Southern and the defendants in May 2008, the defendants acknowledged the line was in much better condition than they had previously claimed and that their January 2008 estimates could not be supported.

37. After the May 2008 inspection, the defendants claimed that New England Southern was responsible for items not identified in the January 2008 estimate and that the cost to repair the remaining items from the January 2008 estimate and the new items identified in the May 2008 inspection was still comparable to the amount the defendants owed New England Southern.

38. Although defendants maintained their position that New England Southern was responsible for repairs to the Leased Line, the defendants still refused to make payments to New England Southern as required by the Lease. No provision of the Lease permitted the defendants to withhold funds owed to New England Southern for this (or any) reason.

39. Even without this vital revenue stream, New England Southern expended considerable sums to repair and maintain the Leased Line, as it had over the course of the Lease.

40. Between 2006 and 2008, New England Southern spent over \$545,000 to replace or repair railroad ties, rails and rail joints, and turnouts (switches), as well as to re-surface track and control vegetation along the line.

41. At New England Southern's request, the Federal Railroad Administration ("FRA"), accompanied by representatives of the New Hampshire Department of Transportation and New England Southern, inspected the Leased Line on September 15, 2008. The FRA identified only 15 items for repair in its September 15, 2008, inspection.

42. New England Southern addressed each and every item noted on the FRA September 15, 2008, inspection report at its own expense.

The Defendants' Conduct

43. New England Southern has been forced to seek judicial assistance to secure a clearly defined and established right to payments due in at least the amounts acknowledged by the defendants' own monthly accounting statements.

44. The defendants' conduct has been oppressive, vexatious, arbitrary, capricious, or in bad faith because New England Southern has been forced to institute this suit in response to the defendants' decision not to make payments due in at least the amounts acknowledged by the defendants' own monthly accounting statements.

45. The defendants have made a regular practice of requiring railroad companies to bring suit against them for non-payment. *See e.g., Plaintiffs' Memorandum of Law in Support of Its Motion for Receivership at 4-5, in The Greenbrier Companies and Greenbrier Management Services, LLC v. Springfield Terminal Railway Company and Boston and Maine Corporation, Civil Action No. 08-10362-NMG (D. Mass. filed August 28, 2008) (citing ten (10) suits brought against one of more of the defendants in this case for non-payment of funds.*

46. Moreover, the defendants attempted to deceive the plaintiff (twice) by inflating repair estimates and using that inflated amount to bargain with the plaintiff. It was to the defendants' advantage to intentionally overstate the amount they claimed would have been required to repair the Leased Line because the closer the amount they claimed that would be required to repair the Leased Line was to the amount they owed the plaintiff, the more likely the plaintiff would be to waive its own claim.

COUNT I
(Breach of Contract)

47. The allegations of Paragraphs 1-46 above are incorporated by reference in this Count I.

48. As a result of the failure and refusal of the defendants to fulfill the obligations Pan Am and B & M assumed under the Lease and pay New England Southern the amounts owed to New England Southern pursuant to the Lease, the defendants Pan Am and B & M are in material breach of that Lease without legal excuse to perform any promise which forms the whole or part of a Lease.

49. Consequently, by reason of their multiple breaches of the parties' Lease, the defendants are liable to New England Southern within the jurisdictional limits of this Court.

50. Pan Am has used its alter ego, B & M, to promote injustice or fraud by refusing to pay amounts owed to New England Southern while reaping the benefits of the Lease enjoyed by its subsidiary, B & M.

COUNT II
(Quantum Meruit)

51. The allegations of Paragraphs 1-46 above are incorporated by reference in this Count II.

52. By providing its services on the Leased Line, New England Southern has created and delivered to the defendants Pan Am and B & M a net benefit in the form of services with a value within the jurisdictional limits of this Court. The defendants have failed and refused to pay to New England Southern despite repeated requests therefore.

53. New England Southern is entitled to recover for the net benefit which it conferred on Pan Am and B & M.

54. Pan Am has used its alter ego, B & M, to promote injustice or fraud by refusing to pay amounts owed to New England Southern while reaping the net benefit enjoyed by its subsidiary, B & M.

**COUNT III
(Unjust Enrichment)**

55. The allegations of Paragraphs 1-46 above are incorporated by reference in this Count III.

56. By providing its services on the Leased Line, New England Southern has created and conferred a benefit on the defendants with a value within the jurisdictional limits of this Court.

57. B & M has been unjustly enriched by this benefit and wrongfully obtained it by not making payments due in amounts acknowledged by the defendants' own monthly accounting statements.

58. Springfield Terminal has been unjustly enriched by this benefit and passively received this benefit by having its rail traffic pass over the Leased Line without compensating New England Southern.

59. Pan Am has been has been unjustly enriched by this benefit because Pan Am has used its alter ego, B & M, to promote injustice or fraud by refusing to pay amounts owed to New England Southern while reaping the benefit enjoyed by its subsidiaries, B & M and Springfield Terminal.

60. Alternatively, Pan Am has been unjustly enriched by this benefit and passively received this benefit of having the rail traffic of its subsidiaries pass over the Leased Line without compensating New England Southern.

61. Under the circumstances, it would be inequitable or unconscionable for the defendants to accept and retain the benefit without paying New England Southern for the value of the benefit.

COUNT IV
(RSA 358-A-New Hampshire's Consumer Protection Act)

62. The allegations of Paragraphs 1-61 above are incorporated by reference in this Count IV.

63. The defendants used an unfair method of competition or deceptive trade practice because even someone inured to the rough and tumble world of commerce would not expect one party to a contract to force the other party to that contract to litigate basic contractual obligations – especially when no defenses have been raised excusing performance.

64. Moreover, this unfair method of competition or deceptive trade practice is a regular business practice for the defendants. As noted above, during the past four years, more than ten (10) companies, including other railroad companies and rail car lessors, have been forced to file suit against the defendants in order to collect payments due under contracts and leases with the defendants.

65. The defendants' conduct is an unfair or deceptive act or practice because the protracted negotiations for payment for services previously rendered with no intent to settle or pay are intentionally vague representations intended to force New England Southern into a continued business relationship with the defendants for whatever period that relationship lasts.

66. Furthermore, the defendants' conduct is an unfair or deceptive act or practice because the defendants' recalcitrant stance on payment for services previously rendered under the Lease increases the likelihood that New England Southern will acquiesce to the defendants' ultimate goal of having New England Southern agree to terminate the Lease on less favorable

terms than it would otherwise, in order to obtain any recovery whatsoever on the debt owed to it by the defendants.

67. Similarly, the defendants attempted to deceive the plaintiff (twice) by inflating repair estimates and using that inflated amount to bargain with the plaintiff. It was to the defendants' advantage to intentionally overstate the amount they claimed would be required to repair the Leased Line because the closer the amount they claimed that would be required to repair the Leased Line was to the amount they owed the plaintiff, the more likely the plaintiff would be to waive its own claim.

68. New England Southern provided services to the defendants in a business-to-business transaction, thus the deceptive acts or practices alleged are acts occurring in trade or commerce within the meaning of New Hampshire's Consumer Protection Act.

69. Therefore, New England Southern is entitled to as much as three (3) times, but not less than two (2) times, the amount of actual damages suffered by New England Southern as willful or knowing violation of New Hampshire's Consumer Protection Act.

70. New England Southern is also entitled to costs of the suit and reasonable attorneys' fees, as determined by the Court for a violation of New Hampshire's Consumer Protection Act.

Jury Demand

71. Plaintiff New England Southern hereby demands a jury trial on all claims so triable.

* * * * *

WHEREFORE, the plaintiff, New England Southern requests that the Court:

- 1) After a hearing on the merits, enter judgment in its favor pursuant to Count I above in the amount due and owing under the Lease;

- 2) After a hearing on the merits, enter judgment in its favor pursuant to Count II above in the amount of the net benefit created and delivered to the defendants;
- 3) After a hearing on the merits, enter judgment in its favor pursuant to Count III above in the amount of the benefit conferred upon the defendants;
- 4) After a hearing on the merits, enter judgment in its favor pursuant to Count I, II, or III above for reasonable attorneys' fees.
- 5) After a hearing on the merits, enter judgment in its favor pursuant to Count IV above in the amount of as much as three (3) times, but not less than two (2) times, the amount of actual damages suffered by New England Southern as willful or knowing violation of New Hampshire's Consumer Protection Act;
- 6) After a hearing on the merits, enter judgment in its favor pursuant to Count IV above and for reasonable attorneys' fees, as determined by the court for a violation of New Hampshire's Consumer Protection Act; and
- 7) Order such further relief as is just and appropriate, in the circumstances.

Respectfully submitted,
New England Southern Railroad Co.,

Dated: February 9, 2009

By: Kevin O'Shea
Martin P. Honigberg, Esq. (#10998)
Kevin M. O'Shea, Esq. (#15812)
Suloway & Hollis, PLLC
9 Capitol Street
P.O. Box 1256
Concord, NH 03302-1256
(603) 224-2341

The State of New Hampshire

MERRIMACK, SS.

SUPERIOR COURT

RECEIPT OF WRIT

DATE: February 11, 2009

DOCKET NUMBER: 09-C-0059

New England Southern Railroad

v.

Boston & Main Corporation, Inc., Springfield Terminal Railway, Co., Inc., and Pan Am Railways, Inc.

The writ in the above-captioned matter was filed with the Clerk of this Court on February 9, 2009 at 1:14p.m.

The plaintiff or his/her attorney is to attach a copy of this receipt to identical copies of the original writ and deliver them to the sheriff or other legally authorized entity for service on each named defendant. Sufficient copies shall be provided to allow for a service copy for each named defendant and a copy for each officer completing service to complete the return. The return copies shall be filed with the court in accordance with N.H. Superior Court Rule 3.

By Order of the Court

William S. McGraw, Clerk

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 09-C-0059

New England Southern Railroad, Co.

v.

Boston & Maine Corporation, Inc.;
Springfield Terminal Railway Co., Inc.; and
Pan Am Railways, Inc.

BRIEF STATEMENT OF DEFENSES AND COUNTERCLAIMS

Defendants Boston & Maine Corporation, Inc., Springfield Terminal Railway Co., Inc., and Pan Am Railways, Inc. (collectively "Counterclaiming Defendants") hereby submit the following brief statement of defenses and counterclaims against Plaintiff New England Southern Railroad, Co. ("Plaintiff").

BRIEF STATEMENT OF DEFENSES

1. Plaintiff has failed to state a claim against Counterclaiming Defendants upon which relief can be granted.
2. Counterclaiming Defendants generally deny liability as to Plaintiff's claims and alleged damages.
3. Plaintiff's claims are barred by the applicable statute of limitations.
4. Plaintiff's claims are barred by the doctrine of waiver.
5. Plaintiff's claims are barred by the doctrine of estoppel.
6. Plaintiff's claims are barred by the doctrine of laches.
7. Plaintiff's claims are barred by the doctrine of unclean hands.
8. Plaintiff's claims are barred by state and federal law.

9. Plaintiff's claims are barred because they are against public policy.

10. Plaintiff lacks standing to bring some or all of these claims against

Counterclaiming Defendants.

11. Plaintiff's claims are barred because it has not been damaged by any act or omission of Counterclaiming Defendants.

12. Plaintiff's claims are barred by the terms of the Lease governing the parties' relationship.

13. Plaintiff's claims are barred as a result of Plaintiff's material breach of the Lease.

14. Plaintiff's claims are barred because the Lease was legally terminated by

Counterclaiming Defendants.

15. Plaintiff's claims are barred because it would be unjustly enriched if it were allowed to recover any part of the damages alleged in the Declaration.

16. Plaintiff's claims are barred by the principles of set off and/or recoupment.

17. Plaintiff's claims are barred because Plaintiff's acts and omissions have caused damage to Counterclaiming Defendants in excess of Plaintiff's claimed damages.

18. Counterclaiming Defendants deny that there is any basis for an award of costs and attorneys' fees to Plaintiff.

19. Counterclaiming Defendants reserve the right to assert additional defenses and specifically give notice that they intend to rely on other such defenses that may become available by law, or pursuant to statute, or during discovery proceedings of this case, and hereby reserve the right to amend their pleadings to assert such additional defenses.

COUNTERCLAIMS

Parties

1. Plaintiff New England Southern Railroad, Co. is, upon information and belief, a Delaware Corporation with a principal place of business at 8 Water Street, Concord, New Hampshire, 03301.

2. Counterclaiming Defendant Boston & Maine Corporation, Inc. ("B&M") is a Delaware Corporation with a principal place of business at 1700 Iron Horse Park, North Billerica, Massachusetts, 01862.

3. Counterclaiming Defendant Springfield Terminal Railway Co., Inc. is a Vermont Corporation with a principal place of business at 1700 Iron Horse Park, North Billerica, Massachusetts, 01862.

4. Counterclaiming Defendant Pan Am Railways, Inc. is a Delaware Corporation with a principal place of business at 1700 Iron Horse Park, North Billerica, Massachusetts, 01862.

Background Facts

5. Plaintiff and Counterclaiming Defendant B&M entered into a lease on or about January 14, 1985 ("the Lease"). B&M terminated the Lease on August 1, 2007.

6. The Lease permitted Plaintiff to operate along a portion of the railroad line owned by B&M.

7. The Lease required Plaintiff to maintain the leased line in good condition and repair. Specifically, Section 3.01 of the Lease states in relevant part:

NES shall, at its own expense, maintain the North End in good condition and repair so that rail operations can be conducted as required by this Lease Agreement and as warranted by traffic levels in a safe, efficient and economical manner and in compliance with all federal and state laws and regulations;

provided, however, that in no event shall the condition of the line be less than the Federal Railroad Administration Class I standard.

Lease § 3.01.

8. Plaintiff has caused damage to the leased line and has failed to maintain the leased line in good condition and repair as required under the lease.

9. Plaintiff's acts and omissions in damaging the leased line failing to maintain the leased line in good condition and repair have caused, and continue to cause damage to Counterclaiming Defendants.

10. The Lease prohibited Plaintiff from making alterations to the leased line without the express prior written consent of B&M. Lease § 1.04.

11. Plaintiff has made alterations to the leased line without B&M's consent.

12. Plaintiff's actions in making unauthorized alterations to the leased line have caused, and continue to cause, damage to Counterclaiming Defendants.

13. Plaintiff has, without authorization, removed track equipment and materials belonging to Counterclaiming Defendants, and has not returned this equipment and materials.

14. Plaintiff's removal and retention of track equipment and materials belonging to Counterclaiming Defendants has caused, and continues to cause, damage to Counterclaiming Defendants.

Count 1
(Breach of Contract)

15. The allegations of Paragraphs 1-14 are incorporated by reference herein.

16. The Lease required Plaintiff to maintain the leased line in good condition and repair and prohibited the Plaintiff from causing damage to, or making unauthorized alterations of, the leased line.

17. Plaintiff has breached the Lease without legal excuse by, including but not limited to:

- a. causing damage to the leased line;
- b. failing to maintain the leased line in good condition and repair; and
- c. making unauthorized alterations of the leased line.

18. Plaintiff's breach of the Lease has caused, and continues to cause, damage to Counterclaiming Defendant B&M.

19. As a result of its breach of the Lease, Plaintiff is liable to Counterclaiming Defendant B&M for breach of contract within the jurisdictional limits of this Court.

Count 2
(Conversion)

20. The allegations of Paragraphs 1-19 are incorporated by reference herein.

21. Plaintiff has, without authorization or justification, removed track equipment and materials belonging to Counterclaiming Defendants without permission, and has failed, without excuse or justification, to return this equipment and materials

22. Plaintiff has converted Counterclaiming Defendants' property by removing track equipment and materials belonging to Counterclaiming Defendants without permission, and failing, without excuse or justification, to return this equipment and materials.

23. Plaintiff's conversion of Counterclaiming Defendants' property has caused, and continues to cause, damage to Counterclaiming Defendants.

24. As a result of its conversion of Counterclaiming Defendants' property, Plaintiff is liable to Counterclaiming Defendants within the jurisdictional limits of this Court.

WHEREFORE, Counterclaiming Defendants request that this Honorable Court:

- A. After a hearing on the merits, enter judgment in their favor on all Counts; and

B. Order such further relief as this Court deems just and necessary.

Respectfully submitted,

Boston and Maine Corporation,
Springfield Terminal Railway Co, Inc., and
Pan Am Railways, Inc.

By their attorneys,

Dated: April 2, 2009

Michael J. Connolly (#14373)
Hinckley, Allen & Snyder LLP
11 South Main Street, Suite 400
Concord, NH 03301-4846
(603) 225-4334

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing was forwarded to all parties on record.

Michael J. Connolly

#786495

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**DOCKET NO. AB-32
(Sub. No. 100)**

**BOSTON AND MAINE RAILROAD &
SPRINGFIELD TERMINAL RAILWAY
COMPANY- ADVERSE DISCONTINUANCE
OF OPERATING AUTHORITY- NEW
ENGLAND SOUTHERN RAILROAD CO., INC.**

VERIFIED STATEMENT OF RICHARD MILLER

Richard Miller, being duly sworn, deposes and states as follows.

1. My name is Richard Miller. My business address is 1700 Iron Horse Park, North Billerica, Massachusetts 01862. I am an employee of the applicant for 42 years and am currently the assistant to the vice president of transportation. I submit this statement to assist the Board and the public with a proper understanding of the applicant's proposed operational plan for line identified in the application for adverse discontinuance of operating authority.
2. Presently the applicant interchanges cars with New England Southern Railroad at Manchester, New Hampshire.
3. The interchanged cars are destined to and from Concord, New Hampshire.
4. Approximately 1700 cars were interchanged to and from this carrier in 2006.

5. The operation would provide service for the major customers as well as a few small volume customers on the segment.
6. In order to provide service to these customers on a consistent basis one crew will be required on a five day per week basis.
7. It is planned to headquarter a crew in Concord, New Hampshire.
8. The workday will be coordinated around the customer needs.
9. This crew would serve customers between Concord and Manchester and also serve the remaining customers at Manchester.
10. We will coordinate the inbound and outbound traffic with main line trains in order to provide seamless movement of traffic form connections to customers in the Concord, New Hampshire area providing a reduction in transit time for the customers.
11. The operational goals of the applicant are to unite these leased tracks back into their original system configuration improving service because the Subject Line will again become part of Pan Am's integrated system, obviating the need for timely and inefficient transfer of traffic between Pan Am and New England Southern Railroad.
12. The applicant will integrate the lease trackage back into the closely controlled atmosphere of its regional railroad operations. The applicant will also implement all of the safety and operational policy and procedures necessary to meet the demands of the service.
13. It is the intent of the applicant to meet and exceed the needs and demands of service to this growing region of New Hampshire without a disruption in service and is committed to working with New England Southern Railroad to obtain a smooth transition of operations once the Lease is terminated.

VERIFICATION

Commonwealth of Massachusetts

Middlesex County

I, Richard Miller, being duly sworn according to law, hereby depose and state that I am authorized to make this Verification, that I have read the foregoing document, and that I know the facts asserted therein are true and accurate as stated, to the best of my knowledge, information and belief.

A handwritten signature in cursive script that reads "Richard E. Miller". The signature is written in black ink and is positioned to the right of the main text block.