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September 27, 2004

BY HAND DELIVERY



ENTERED
Office of Proceedings
OCT 12 2004
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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

No. 42087

Re: *Groome & Associates, Inc. and Lee K. Groome v. Greenville County Economic Development Corporation*

Dear Secretary Williams:

Enclosed for filing are an original and 10 copies of a "Motion to Supplement Previously Filed Motion to Waive Procedures Governing the Filing of Fees, Request for Immediate Institution of a Complaint Proceeding and Establishment of a Procedural Schedule," filed on behalf of Groome & Associates. Copies have been served as stated in the Certificate of Service.

Two copies of the above-mentioned document are enclosed, which we request be date stamped and returned to the undersigned. Thank you for your assistance in this matter.

Very truly yours,

Richard H. Streeter

Enclosures

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Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.

ENTERED
Office of Proceedings

OCT 12 2004

Groome & Associates, Inc. and)
Lee K. Groome,)
)
Complainants)
)
vs.)
)
Greenville County Economic Development)
Corporation,)
)
Defendant.)

Part of
Public Record



No. 42087

MOTION TO SUPPLEMENT PREVIOUSLY FILED MOTION TO
WAIVE PROCEDURES GOVERNING THE FILING OF FEES,
REQUEST FOR IMMEDIATE INSTITUTION OF A COMPLAINT PROCEEDING
AND ESTABLISHMENT OF A PROCEDURAL SCHEDULE

On August 23, 2004, Groome & Associates, Inc. and Lee K. Groome (collectively hereinafter referred to as "Complainants"), by and through their undersigned counsel, requested the Surface Transportation Board ("Board") to exercise its discretion, as contemplated by 49 C.F.R. § 1002.2(e), by waiving the filing fee for a formal Complaint, filed with the Board on or about May 23, 2001, and by instituting a Complaint proceeding effective as of that date. In further support thereof, Complainants respectfully request the Board to consider the following information:

1. As noted in the pending motion, on April 17, 2001, Complainants filed an action before the Court of Common Pleas for Greenville County, South Carolina seeking a declaratory judgment arising out of the failure of the Greenville County Economic Development Corporation ("GCEDC") to provide any rail service to Complainants. *Groome and Associates v. Greenville County Economic Development Corporation*, 01-

CP-23-2351. Although GCEDC challenged the subject matter jurisdiction of the State Court and repeatedly raised the defense of reasonableness to cover its admitted failure to provide rail service, it never sought to have the State Court refer the matter to the Board under the primary jurisdiction doctrine. However, because GCEDC has claimed throughout the state proceeding that it acted reasonably when it refused to institute service, Groome has requested the court to refer the matter to the Board.

2. The Court Reporter for the Court of Common Pleas, County of Greenville, South Carolina has recently transcribed that portion of the record that reflects the oral ruling of the Court in the State proceeding entitled. A copy of the partial transcript of record is attached hereto.

3. By its oral ruling, the County Court, after stating that it is “as qualified as the Surface Transportation Board to decide ... the issues in the case,”¹ usurped the jurisdiction of this Board by determining the issue of the reasonableness of a nonexistent embargo. That ruling, if not repudiated by the Board, would sanction GCEDC’s refusal to provide rail service even though it assured the Board that it would provide rail service if it were authorized to acquire a line of railroad. Moreover, that ruling would excuse the GCEDC’s failure, after it assumed the common carrier obligation, either to seek permission from the Board under 49 U.S.C. § 10903 either to discontinue rail service or abandon the line of railroad. These are serious issues of national consequence that should not be left to a Court of Common Pleas to resolve.

4. By determining that GCEDC acted reasonably when it failed to take any action, the ruling also disregards the long line of well-established precedent that the

¹ Transcript at pp. 3-4.

Board is the proper party to determine issues of reasonableness. *See, e.g., Pejepscot Industrial Park, Inc. v. Maine Central Railroad Co.*, 215 F.3d 195, 205-06 (1st Cir. 2000).

5. Even if GCEDC acted out of total ignorance of its statutory obligations, that does not excuse the patent violation of the common carrier obligation. Therefore, the Board should assert its jurisdiction over this controversy and perform the adjudicatory functions that it alone may perform. As §10501(b) provides, the jurisdiction of the Board over “transportation by rail carriers, and the remedies provided in this part with respect to ... practices, routes, services and facilities of such carriers ... *is exclusive*” (emphasis added). Given the unequivocal Federal preemption, the Board should assert jurisdiction over the Complaint that was duly filed with the Board in 2001 in order to resolve the issues that are raised thereby.

Respectfully submitted,



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Dated: September 27, 2004

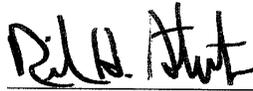
Certificate of Service

I, Richard H. Streeter, do hereby certify that on this 27th day of September, I served a true copy of the foregoing on the following named individuals by certified mail, postage prepaid:

W. Francis Marion, Jr., Esq.
Andrew J. White, Jr.
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 2048
Greenville, SC 29602

Gerald Seals, Registered Agent
Greenville County Economic Development Corporation
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Greenville, SC 29601

William A. Mullins, Esq.
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2401 Pennsylvania Avenue, N.W.
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Washington, D.C. 20037



Richard H. Streeter

ATTACHMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF

COMMON PLEAS

GROOME AND ASSOCIATES,)
)
PLAINTIFF.)

-vs-

GREENVILLE COUNTY ECONOMIC)
DEVELOPMENT CORPORATION,)
)
DEFENDANT.)

PARTIAL TRANSCRIPT OF RECORD
01-CP-23-2351

MARCH 24, 2004
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. FEW

A P P E A R A N C E S:

JOHN S. SIMMONS, Esquire
Attorney for the Plaintiff

W. FRANCIS MARION, JR., Esquire
ANDREW J. WHITE, JR., Esquire
Attorneys for the Defendant

DAWN V. KOFFSKEY
Court Reporter

DBPA Received 9.10.04 via hand deliver
Calendared _____ express/overnight
Archived _____ U.S. mail
Tickled _____ fax
Copy / fax / Email to Lee Groome
Done _____ Sub file _____

+ Richard Street

INDEX

PAGE NO.

RULING

3

INDEX TO EXHIBITS

(NO EXHIBITS WERE ENTERED DURING THIS PORTION OF THE TRIAL)

RULING

1 **THE COURT:** ALL RIGHT. I'VE THOUGHT ABOUT THE CASE A
2 LOT, AND PUT TOGETHER MY THOUGHTS AS THE CASE WAS GOING
3 FORWARD AT NIGHTS AND IN THE MORNINGS, AND I AM READY TO
4 RULE. AND I'M GOING TO DESCRIBE MY RULING, AND I'M GOING TO
5 ASK THAT AN ORDER BE PREPARED TO REFLECT THAT RULING.

6 TO START OFF WITH WITH SOME OF THE PROCEDURAL ISSUES,
7 I'M REALLY NOT ADDRESSING THE QUESTION OF SUBJECT MATTER
8 JURISDICTION BECAUSE, AS I SAID, I BELIEVE JUDGE MILLER'S
9 RULING ANSWERS THAT QUESTION AND IS THE LAW OF THIS CASE AND
10 IS BINDING ON ME AND THAT IT WOULD BE IMPROPER FOR ME TO
11 QUESTION JUDGE MILLER'S RULING.

12 ON THE QUESTION OF PRIMARY JURISDICTION. PRIMARY
13 JURISDICTION IS NOT REALLY A SUBJECT MATTER JURISDICTION
14 QUESTION, ALTHOUGH, YOU KNOW, IT COMES VERY CLOSE TO IT. AND
15 JUDICIAL ECONOMY IS THE PHRASE I WAS LOOKING FOR EARLIER, IT
16 MIGHT REALLY EVEN BE SORT OF GOVERNMENTAL ECONOMY. BUT IT
17 WOULD BE APPROPRIATE THAT EVEN THOUGH I COULD NOT DEMAND THAT
18 THE SURFACE TRANSPORTATION BOARD HEAR THIS, I COULD SAY TO
19 THE PLAINTIFF, I'M NOT HEARING IT BECAUSE OF THE FACT THAT I
20 BELIEVE THE SURFACE TRANSPORTATION BOARD IS UNIQUELY
21 QUALIFIED AND SET UP UNDER FEDERAL LAW TO HEAR THIS AND THAT
22 IT SHOULD GO BEFORE THEM BEFORE IT COMES TO ME.

23 BUT I'M NOT GOING TO SAY THAT IN THIS CASE, AND HERE'S
24 WHY -- AND I'LL GET INTO THIS MORE IN A LITTLE BIT -- I THINK
25 THAT THE FACTS OF THIS CASE ARE SUCH THAT I AM AS QUALIFIED

RULING

1 AS THE SURFACE TRANSPORTATION BOARD TO DECIDE WHETHER OR
2 NOT -- OR TO DECIDE THE ISSUES IN THE CASE. AND I'LL GET
3 AROUND TO EXPLAINING WHY THAT IS IN JUST A MINUTE. AND SO,
4 I'M NOT GOING -- I AM GOING TO GO AHEAD AND ADDRESS THE
5 QUESTION OF WHETHER OR NOT THE DEFENDANT IS LEGALLY OR -- AND
6 WAS LEGALLY OBLIGATED TO PROVIDE RAIL SERVICE.

7 ON THE QUESTION OF DAMAGES, I -- MR. SIMMONS MAKES A
8 GOOD POINT ABOUT THE VALUE OF THE -- YOU KNOW, IF THIS WERE A
9 CASE INVOLVING THE VALUE OF THE REAL ESTATE, THAT WOULD BE
10 ONE THING. BUT IT'S NOT. I MEAN, THIS IS SIMPLY A QUESTION
11 OF WHAT HAPPENED TO THIS BUSINESS AND WHETHER OR NOT IT WAS A
12 -- WHAT ARE THE DAMAGES. I THINK THAT THIS COURT IS -- IS --
13 THERE'S NOTHING ABOUT THE SURFACE TRANSPORTATION BOARD --
14 THERE'S NOTHING ABOUT THAT QUESTION THAT MAKES THE FEDERAL
15 AGENCY MORE QUALIFIED TO ANSWER THAT QUESTION. I DON'T NEED
16 THEIR EXPERTISE IN EVALUATING WHETHER OR NOT DAMAGE WAS DONE
17 TO A BUSINESS AND, IF SO, HOW MUCH. I BELIEVE THAT THIS
18 COURT NOT -- I SAID "I," BUT I'M TALKING ABOUT THE COURT --
19 I'M NOT TALKING ABOUT ME PERSONALLY -- IS QUALIFIED TO DO
20 THAT EQUALLY SO TO THE SURFACE TRANSPORTATION BOARD.

21 ALL RIGHT. NOW, GETTING TO THE MERITS OF THE CASE. THE
22 FIRST THING IS THE FACTS OF THIS CASE ARE UNIQUE IN THAT
23 YOU'VE GOT SOMEBODY WHO COMES IN AND BUYS A RAILROAD LINE AND
24 THEY'RE NOT -- THEY ARE NOT, NEVER HAVE BEEN, AND WHETHER
25 THEY EVER WILL BE OR NOT IS YET TO BE SEEN -- BUT ARE NOT AND

RULING

1 NEVER HAVE BEEN A RAIL CARRIER. THEY'RE NOT A RAILROAD.
2 THEY DON'T KNOW ANYTHING ABOUT RAILROADS EXCEPT WHAT THEY CAN
3 LEARN ALONG THE WAY.

4 THAT REALLY DISTINGUISHES THIS CASE FROM A LOT -- FROM
5 WHAT I THINK MOST OF THE TIME IS INVOLVED WHEN YOU HAVE AN
6 EMBARGO, WHEN YOU HAVE A DENIAL OF SERVICE OR WHATEVER. AND
7 I THINK THAT'S -- I THINK IT'S VERY IMPORTANT TO THE FACTS OF
8 THIS CASE BECAUSE OF SEVERAL REASONS.

9 FIRST OF ALL, IT MAKES THE CONCEPT OF EMBARGO KIND OF
10 LOOK STRANGE ON THE FACTS OF THIS CASE. IT DOESN'T -- THE
11 CONCEPT OF AN EMBARGO DOESN'T REALLY COME UP, I DON'T THINK,
12 VERY OFTEN IN A SITUATION LIKE THIS.

13 I'VE READ THESE CASES AND IT -- I BELIEVE FIRMLY THAT
14 THERE IS THE -- AN EMBARGO IS SIMPLY AN ACKNOWLEDGEMENT BY
15 THE LAW, THE COURTS, BECAUSE IT IS, AS POINTED OUT, A COMMON
16 LAW DOCTRINE. IT IS AN ACKNOWLEDGEMENT OF THE FACT THAT
17 THERE MAY BE SITUATIONS, WILL BE SITUATIONS THAT COME UP THAT
18 REQUIRE RAIL SERVICE TO BE INTERRUPTED, AND THOSE MAY COME UP
19 IMMEDIATELY. AND WHEN THOSE CIRCUMSTANCES COME UP, IT -- IF
20 IT IS REASONABLE FOR THE CARRIER TO DO SO, THEY MAY INTERRUPT
21 SERVICE.

22 NOW, MOST OF THE TIME IT COMES UP IN A SITUATION WHERE
23 YOU'VE GOT A RAILROAD WHO IS A MEMBER OF THE A.A.R. AND
24 THEY'VE GOT A BUNCH OF SHIPPERS ON THE LINE, AND SO THE
25 A.A.R. HAS COME UP WITH A METHOD OF FORMALLY PROVIDING NOTICE

RULING

1 OF THE EMBARGO. AND THERE ARE A LOT OF PEOPLE WHO -- A LOT
2 OF BUSINESSES AND PERHAPS EVEN MAJOR BUSINESSES WHOSE
3 PROFITABILITY AND LIVELIHOOD, AND THERE ARE MANY PEOPLE WHO
4 WORK FOR THOSE BUSINESSES WHO LIVELIHOOD DEPEND ON THE
5 EXISTENCE OF THAT RAIL SERVICE, AND IF IT IS SHUT OFF WITHOUT
6 NOTICE, THEN THAT'S NOT A GOOD THING. AND SO WHAT THE A.A.R.
7 CIRCULAR TRIES TO DO, I BELIEVE, IS TO PROVIDE THE BEST
8 NOTICE THAT IT CAN TO GIVE TO SHIPPERS THE BEST CHANCE THAT
9 THEY CAN HAVE TO COME UP WITH SOME ALTERNATIVE WAY OF GETTING
10 THEIR RESOURCES TO THEM AND THEIR GOODS OUT SO THAT THEY CAN
11 CONTINUE THEIR BUSINESS WHILE WHATEVER NEEDS TO BE DONE TO
12 THE RAILLINE GETS DONE.

13 THAT'S NOT REALLY THE SITUATION HERE. BUT I THINK
14 THAT'S IMPORTANT BECAUSE I DON'T SEE HOW THE INDUSTRY
15 STANDARD OR PRACTICE OF COMPLYING WITH THIS A.A.R. CIRCULAR
16 CAN TAKE ON THE FORCE OF LAW.

17 IT'S MY RULING THAT THE DOCTRINE OR CONCEPT OF AN
18 EMBARGO IS SIMPLY THAT A CARRIER DOES NOT HAVE TO PROVIDE
19 RAIL SERVICE ALL OF THE TIME, AND THERE ARE SITUATIONS WHEN
20 RAIL SERVICE CAN BE INTERRUPTED WITHOUT THE PRIOR PERMISSION
21 OF THE SURFACE TRANSPORTATION BOARD OR WHATEVER APPLICABLE
22 GOVERNMENT AGENCY THERE IS. SO IN THE CONTEXT OF THIS
23 SITUATION, THAT'S WHAT AN EMBARGO IS.

24 BUT ON THE OTHER HAND, REALLY, YOU CAN LOOK AT IT IN A
25 DIFFERENT WAY TOO, AND THAT'S THE SHIPPER HAS GOT A RIGHT FOR

RULING

1 SURE, AND PERHAPS A DUTY, TO PROTECT ITS OWN ACCESS TO THAT
2 RAILLINE. IT'S GIVEN MECHANISMS IN SEVERAL FORUM. IT CAN GO
3 TO THE SURFACE TRANSPORTATION BOARD AND FILE AN ACTION ASKING
4 THE SURFACE TRANSPORTATION BOARD TO REQUIRE THE CARRIER TO
5 PROVIDE SERVICE. IT COULD GO TO THE FEDERAL COURT AND ASK
6 FOR AN INJUNCTION. IT COULD GO TO THE STATE COURT,
7 PRESUMABLY, IF THE JURISDICTION ISSUE THAT WAS DECIDED BY
8 JUDGE MILLER IS CORRECT, AND GET AN INJUNCTION THAT WOULD
9 REQUIRE RAIL SERVICE TO BE MAINTAINED DURING THE SHORT TERM.

10 SO CERTAINLY A SHIPPER, SUCH AS THE PLAINTIFF IN THIS
11 CASE, HAS THE RIGHT TO DO THAT. AND FRANKLY, I THINK THAT
12 THE SHIPPER IN THIS CASE HAS THE DUTY TO DO THAT. I THINK
13 THAT IT'S THE RESPONSIBILITY -- AS I UNDERSTAND THE FEDERAL
14 LAW, IT'S THE RESPONSIBILITY OF THE SHIPPER TO PROTECT
15 THEMSELVES IN TERMS OF KEEPING ACCESS OPEN.

16 NOW, THEY CAN'T ACTUALLY MAKE THE -- I'M NOT SAYING THAT
17 THE SHIPPER ACTUALLY GOES OUT AND FIXES THE BRIDGES AND FIXES
18 THE GRADE CROSSINGS AND ALL OF THAT STUFF. I'M TALKING ABOUT
19 TAKING THE INITIATIVE TO MAKE SURE THAT THE CARRIER DOES WHAT
20 IT'S REQUIRED TO DO UNDER FEDERAL LAW, GETTING THE QUESTION
21 TO THE PROPER FORUM IN TIME FOR THE QUESTION TO BE DECIDED IN
22 TIME TO MAINTAIN THE SHIPPER'S BUSINESS.

23 NOW, SO WHETHER YOU LOOK AT IT AS IT BEING AN EMBARGO
24 QUESTION AND WHETHER OR NOT THE DEFENDANT HERE WAS REASONABLE
25 IN INTERRUPTING SERVICE, OR IF YOU LOOK AT IT AS A DUTY OR

RULING

1 RIGHT ON THE PART OF THE SHIPPER TO INSURE ITS OWN SERVICE,
2 IT ALL BOILS DOWN IN THE END, I BELIEVE, TO THE QUESTION OF
3 WHETHER OR NOT IT IS REASONABLE FOR THE OWNER OF THE LINE TO
4 INTERRUPT SERVICE.

5 AND SO THAT'S WHERE WE ARE HERE. I DON'T THINK IT
6 REALLY MAKES A WHOLE LOT OF DIFFERENCE ON THE FACTS OF THIS
7 CASE WHETHER I SAY THIS IS A VALID EMBARGO OR IT'S NOT. I
8 THINK THE QUESTION COMES DOWN ULTIMATELY TO -- THE CASE COMES
9 DOWN ULTIMATELY TO, IS IT REASONABLE FOR THE COUNTY -- FOR
10 THE DEFENDANT TO NOT PROVIDE SERVICE? AND I WILL SAY THAT I
11 THINK THAT WHETHER THAT QUESTION IS RAISED IN THE EMBARGO
12 CONTEXT OR RAISED BY THE SHIPPER THAT IT IS THE BURDEN OF THE
13 PLAINTIFF TO PROVE THAT RAIL SERVICE SHOULD BE PROVIDED.

14 NOW, YOU KNOW, THE SURFACE TRANSPORTATION BOARD MAY NOT
15 LOOK AT IT QUITE THAT WAY. THEY MAY NOT CONSIDER THINGS IN
16 TERMS OF THE BURDEN OF PROOF. THEY ARE AN ADMINISTRATIVE
17 AGENCY. THEY MAY LOOK AT IT AND SAY, WELL, DO WE THINK IT
18 SHOULD GO THIS WAY OR DO WE THINK IT SHOULD GO THAT WAY?

19 SO THAT BRINGS UP THE STATUTE OF LIMITATIONS. NOW, WHEN
20 THE -- WHEN MR. GROOME -- OR WHEN THE PLAINTIFF FIRST KNEW
21 THAT THERE WAS GOING TO BE INTERRUPTED SERVICE COULD NOT
22 POSSIBLY HAVE BEEN ANY LATER THAN FEBRUARY OF 1998, WHEN RAIL
23 SERVICE STOPPED. I MEAN, THERE IS NO -- THERE IS NO DOUBT
24 THAT THEY KNEW AS OF THAT TIME THAT RAIL SERVICE STOPPED.
25 AND UNDER MY VIEW OF THE LAW THAT IT IS THE SHIPPER'S

RULING

1 RESPONSIBILITY TO PROTECT ITS ACCESS TO THE RAILLINES AROUND
2 IT, THE STATUTE OF LIMITATIONS BEGINS TO RUN AT THAT TIME.

3 THE SUGGESTION IS MADE, I BELIEVE, THAT THE EXISTENCE OF
4 THE EMBARGO THAT WAS PROBABLY FILED, I ASSUME, BY RAILTEX
5 WOULD TOLL THE STATUTE OF LIMITATIONS UNTIL THE EMBARGO
6 EXPIRES. I DON'T BELIEVE SO BECAUSE I THINK THAT IF THAT
7 WERE TRUE, THEN -- AND IF IT WERE TRUE THAT THE EMBARGO
8 AUTOMATICALLY LASTS FOR ONE YEAR, THEN -- I JUST -- I JUST
9 DON'T THINK -- I JUST DON'T THINK THAT THAT'S TRUE.

10 I THINK THAT THE SHIPPER HAS GOT TO TAKE ACTION. IT'S
11 GOT AT LEAST TWO FORUM IN WHICH TO TAKE THAT ACTION, AND THAT
12 WOULD BE WITH THE SURFACE TRANSPORTATION BOARD OR THE FEDERAL
13 COURT, AND POSSIBLY THE STATE CIRCUIT COURT.

14 SO I THINK THE STATUTE OF LIMITATIONS BEGINS TO RUN ON
15 THE DATE OF THE STOPPAGE OF SERVICE ON THE LINE AT THE
16 LATEST. THE RECORD IN THIS CASE INDICATES THAT THE ACTION
17 WAS COMMENCED IN JUNE OF 2002 WHEN SERVICE WAS MADE PROPERLY
18 ON THE DEFENDANT.

19 NOW, THERE IS -- SO WITH THOSE TWO DATES, THAT WOULD
20 MEAN THAT THE PLAINTIFF HAS NOT COMPLIED WITH THE STATUTE OF
21 LIMITATIONS. I'M A LITTLE BIT CONCERNED ABOUT THE FACT THAT
22 SERVICE WAS MADE, THAT AN APPEARANCE WAS MADE, THAT THE THING
23 -- THE CASE WAS LITIGATED TO SOME EXTENT, DEFAULT JUDGMENT
24 WAS ENTERED LONG BEFORE JUNE OF 2002. SO I'M GOING TO --
25 THAT -- I AM GOING TO RULE THAT THE STATUTE OF LIMITATIONS

RULING

1 HAS NOT BEEN COMPLIED WITH, BUT I'M GOING TO GO PAST THAT AND
2 START TALKING -- AND JUST GO STRAIGHT TO THE MERITS OF THE
3 CASE ALSO.

4 SO ON THE QUESTION OF THE REASONABLENESS OF WHETHER --
5 OF THE FAILURE OF THE DEFENDANT TO PROVIDE RAIL SERVICE, YOU
6 KNOW, I THINK IT'S -- I THINK IT'S VERY IMPORTANT TO
7 UNDERSTAND THE CONTEXT IN WHICH THE DEFENDANT TOOK OVER THIS
8 RAILLINE, AND THAT IS, THAT THE SERVICE HAD BEEN STOPPED.

9 AND MUCH EMPHASIS HAS BEEN PUT ON THE FACT THAT THE
10 DEFENDANT NEVER ACTUALLY FORMALLY FILED AND SERVED NOTICE OF
11 AN EMBARGO. AND AS I SAID A MINUTE AGO, THIS IS A SITUATION
12 THAT MUST BE SOMEWHAT UNIQUE IN RAILROAD SITUATIONS.

13 NORMALLY, ONE WOULD ASSUME, YOU'VE GOT A LINE WITH SEVERAL --
14 AT LEAST SEVERAL SHIPPERS ON THE LINE WHO NEED TO KNOW THAT
15 THE SERVICE IS GOING TO STOP BECAUSE THEY NEED A CHANCE TO
16 OBTAIN ALTERNATIVE WAYS OF GETTING THEIR RESOURCES IN AND
17 THEIR GOODS OUT.

18 THAT'S NOT THE CASE HERE. MR. GROOME AND THE PLAINTIFF,
19 GROOME AND ASSOCIATES, KNEW WITHOUT ANY DOUBT SIXTEEN TO
20 SEVENTEEN MONTHS BEFORE THE DEFENDANT ACQUIRED THIS LINE THAT
21 THERE WAS NO RAIL SERVICE ON THAT LINE. AND SO WHEN THE
22 DEFENDANT ACQUIRES IT, THE -- ONE OF THE PURPOSES OF A FORMAL
23 FILING OF AN EMBARGO IS NOT RELEVANT.

24 AND SO I'M NOT PUTTING ANY EMPHASIS ON -- I DON'T FIND
25 ANY SIGNIFICANCE TO THE FACT THAT THE DEFENDANT NEITHER

RULING

1 UNDERSTOOD THAT THERE WAS AN EMBARGO AND IT IS -- I AGREE
2 WITH YOU THAT IT IS KIND OF -- YOU KNOW, IT -- IT SORT OF IS
3 TELLING ABOUT THE CIRCUMSTANCES OF THIS CASE THAT THE
4 DEFENDANT DIDN'T EVEN REALLY UNDERSTAND WHAT AN EMBARGO WAS
5 UNTIL LATE IN THE PROCESS. BUT THE FACT THAT THEY NEVER
6 FILED AND SERVED A FORMAL EMBARGO IS, IN MY VIEW, NOT
7 SIGNIFICANT.

8 I DON'T REALLY -- YOU KNOW, I THINK THAT THE -- I THINK
9 THAT THE BURDEN IN GOING OVER THESE FACTORS SHOULD PROPERLY
10 BE ON THE PLAINTIFF. BUT EVEN SO, THE COST OF REPAIR IS VERY
11 HIGH. WHETHER IT'S \$300,000 OR \$500,000 OR TWO AND A HALF
12 MILLION DOLLARS OR, LOOKING AT THE FIGURES THAT WERE USED IN
13 THAT LAST LETTER, I BELIEVE IT WAS, \$750,000 TO REPAIR THE
14 RAILS AND CROSS TIES UP TO MILE SEVEN, AND \$656,000 FROM MILE
15 SEVEN ON UP TO AIR PRODUCTS, PLUS \$299,000 OR SOMETHING -- OR
16 \$199,000 TO REPAIR THE BRIDGES. THAT'S -- WHATEVER WAY YOU
17 SHAKE IT OUT, IT'S PRETTY BIG MONEY. AND IN THE CONTEXT OF A
18 RAILROAD THAT IS NOT IN SERVICE, WHERE THE NUMBER OF SHIPPERS
19 ON THE LINE IS DWINDLING SIGNIFICANTLY, IT IS A SIGNIFICANT
20 FACTOR IN FAVOR OF THE REASONABLENESS OF THE DEFENDANT IN NOT
21 PROVIDING SERVICE. THE COST OF THE REPAIR IS A SIGNIFICANT
22 FACTOR.

23 THE INTENT OF THE RAILROAD. NOW, THIS IS SOMETHING THAT
24 I THINK IS VERY IMPORTANT. HERE YOU'VE GOT A LOCAL
25 GOVERNMENT WHO SEE -- WHO, AS IT SHOULD, IS LOOKING TOWARD

RULING

1 THE LONG-TERM VIABILITY OF THAT COMMUNITY AND SEES A RAILLINE
2 THAT THEY BELIEVE, RIGHTFULLY OR WRONGFULLY -- IT DOESN'T
3 MAKE ANY DIFFERENCE -- BUT THEY BELIEVE IS USEFUL AND
4 BENEFICIAL TO THE COMMUNITY TO REMAIN AS A USABLE RAILLINE
5 INTO THE FUTURE. THE OWNER OF THE LINE HAS INDICATED -- HAS
6 STOPPED SERVICE AND HAS INDICATED ITS INTENT AT SOME POINT IN
7 THE FUTURE TO ABANDON THE LINE. THE CONSEQUENCES OF AN
8 ABANDONMENT WOULD MEAN THAT THE LINE IS NEVER GOING TO BE --
9 PROBABLY NEVER GOING TO BE USABLE AGAIN. THAT DOESN'T MEAN
10 THAT -- THAT'S NOT TO SAY THAT WE DON'T KNOW -- WE DON'T KNOW
11 WHAT WOULD HAVE HAPPENED IN THE SURFACE TRANSPORTATION BOARD
12 IF IT HAD GONE ON, IF THAT ABANDONMENT PROCEDURE HAD ACTUALLY
13 BEEN SOUGHT AND IF IT HAD BEEN PURSUED. PERHAPS, YOU KNOW, A
14 DIFFERENT RESULT WOULD HAVE -- COULD HAVE BEEN ATTAINED.
15 PERHAPS ANOTHER SHIPPER WOULD HAVE COME IN AND SAID, "HEY, WE
16 LIKE THIS LINE. WE THINK CAN FIX THIS LINE AND RUN IT." BUT
17 WE DIDN'T GET THAT FAR. THE POINT IS THAT THE COUNTY
18 COUNCIL, ACTING AS IT SHOULD, IN ITS VIEW OF THE BEST
19 INTEREST OF THE COUNTY SEES THIS OPPORTUNITY AND DOESN'T WANT
20 IT TO GO AWAY, DOES NOT WANT THAT LINE TO BE LOST, AND TAKES
21 ACTION THAT IT BELIEVES IT SHOULD TAKE TO PREVENT IT FROM
22 BEING LOST AND BUYS THE LINE.

23 NOW, IF THE FEDERAL GOVERNMENT IS GOING TO COME ALONG
24 HERE AND SAY THAT NO COUNTY CAN COME IN AND TAKE ACTION ON
25 BEHALF OF ITS COMMUNITY TO PRESERVE THE QUALITY OF LIFE AND

RULING

1 THE INDUSTRIAL AND RECREATIONAL VIABILITY OF ITS COMMUNITY
2 WITHOUT LOOKING AT SOME SUBSTANTIAL LIABILITY FOR FAILURE TO
3 PROVIDE RAIL SERVICE IN THE MEANTIME, THEN I GOT A SERIOUS
4 PROBLEM WITH THAT. AND I REALIZE THAT I'M NOT THE FEDERAL
5 GOVERNMENT AND THEY CAN SAY WHATEVER THEY WANT TO AND THERE'S
6 NOTHING I CAN DO ABOUT IT. BUT I DON'T BELIEVE THE FEDERAL
7 GOVERNMENT WILL SAY THAT.

8 THE STATE GOVERNMENT, WITH THIS COURT AS ITS
9 REPRESENTATIVE, IS NOT GOING TO SAY THAT. THE STATE -- I
10 BELIEVE THAT IT WOULD BE CONTRARY TO PUBLIC POLICY TO SAY
11 THAT THE COUNTY OR ANY MUNICIPALITY OR ANY LOCAL GOVERNMENT
12 CAN'T COME IN AND DO WHAT THE COUNTY DID.

13 WE CAN'T DANCE AROUND THE FACT THAT THE COUNTY DID THIS.
14 YOU KNOW, THE COUNTY IS ENTITLED TO DO SOME -- A LOT OF
15 THINGS. IT'S ENTITLED TO TAKE ACTION. IT'S ALSO ENTITLED TO
16 PROTECT ITS LIABILITIES BY USING THE CORPORATE FORUM. THAT
17 QUESTION MAY NEED TO BE ADDRESSED IN A DIFFERENT FORUM. BUT
18 CERTAINLY IT WAS THE COUNTY THAT DID THIS. AND I'M NOT
19 SAYING THAT THE COUNTY TAKES ON LIABILITY FOR IT. I'M JUST
20 SAYING THAT IT'S OBVIOUS THAT THE COUNTY IS WHO DID THIS.
21 THAT'S JUST ONE OF THE FACTORS.

22 SO WHEN LOOKING AT THE INTENT OF THE RAILROAD, I THINK
23 THE -- THERE'S ABSOLUTELY NOTHING IN THE INTENT OF THE
24 DEFENDANT IN THIS CASE THAT WEIGHS IN FAVOR OF WHAT THEY --
25 OR THAT WEIGHS AGAINST WHAT THEY DID BEING UNREASONABLE -- I

RULING

1 MEAN, BEING REASONABLE. THAT FACTOR WEIGHS IN FAVOR OF THE
2 DEFENDANT.

3 THE LENGTH OF THE EMBARGO, OBVIOUSLY THE LENGTH OF THE
4 EMBARGO IS VERY LONG, AND IT APPEARS AT THIS POINT TO BE
5 ESSENTIALLY INDEFINITE, IF NOT PERMANENT.

6 THE AMOUNT OF TRAFFIC ON THE LINE IS VERY SMALL. THAT
7 DOES NOT WEIGH IN FAVOR OF THE PLAINTIFF. THAT WEIGHS IN
8 FAVOR OF THE DEFENDANT.

9 AND THE FINANCIAL CONDITION OF THE CARRIER, I JUST -- I
10 DON'T REALLY THINK THAT'S A SIGNIFICANT FACTOR. I MEAN, I
11 THINK THAT THE -- IF ALL OF THE OTHER FACTORS WERE TO WEIGH
12 IN FAVOR OF REQUIRING THE DEFENDANT TO PROVIDE SERVICE, THE
13 DEFENDANT BEING AN ARM OF THE COUNTY GOVERNMENT WITH PLENTY
14 OF RESOURCES TO REHABILITATE THIS LINE IF THEY WANTED TO,
15 THAT FACTOR WOULD PROBABLY WEIGH IN FAVOR OF THE PLAINTIFF.

16 SO HAVING ANALYZED THE FACTORS AND THEN -- IT'S JUST
17 CLEAR TO ME THAT IT'S NOT UNREASONABLE FOR A COUNTY TO COME
18 IN, IN VIEW OF THE PROSPECT -- CERTAINLY NOT A GUARANTEED
19 PROSPECT BUT A REASONABLE PROSPECT THAT THIS LINE WOULD BE
20 LOST PERMANENTLY IF THEY DON'T TAKE ACTION, FOR THEM TO
21 ARRANGE FOR THERE TO BE SOME WAY TO PURCHASE THE LINE. THE
22 COUNTY MADE ATTEMPTS TO TRY TO KEEP THE LINE RUNNING. IT
23 PERHAPS COULD HAVE DONE MORE, BUT IT APPEARS TO ME THAT THE
24 COUNTY DID A LOT TO TRY TO KEEP THE LINE -- TO GET THE LINE
25 RUNNING, AND I JUST THINK THAT THE COUNTY -- THE DEFENDANT

RULING

1 ACTED REASONABLY IN DENYING -- IN CONTINUING TO DENY SERVICE
2 TO THE SHIPPERS ON THAT LINE.

3 NOW, I'M GOING TO GO AHEAD AND, SINCE WE'VE TRIED THIS
4 CASE, I'M GOING TO GO AHEAD AND LOOK AT THE CAUSATION AND
5 DAMAGES QUESTION ANYWAY. BECAUSE, YOU KNOW, I THINK THAT
6 IT'S POSSIBLE THAT THE APPELLATE COURT OF OUR STATE COULD
7 LOOK AT THIS THING DIFFERENTLY AND SAY THAT, "NO, FEDERAL LAW
8 IS VERY CLEAR. THERE HAD TO BE A FORMAL FILING AND NOTICE OF
9 AN EMBARGO, AND, FAILING THAT, THERE IS LIABILITY." AND SO
10 I'M GOING TO GO AHEAD AND ADDRESS THOSE QUESTIONS NOW.

11 I DON'T SEE HOW ANY LEGAL STRUCTURE COULD AWARD DAMAGES
12 WITHOUT REQUIRING THAT THEY BE PROXIMATELY CAUSED BY THE
13 WRONGFUL CONDUCT THAT IS ALLEGED, AND SO I'M GOING TO USE THE
14 BASIC CONCEPT OF PROXIMATE CAUSE THAT WE HAVE IN SOUTH
15 CAROLINA.

16 IF THERE IS LIABILITY, WHAT ARE THE DAMAGES? IT'S CLEAR
17 TO ME THAT THE INCREASED SHIPPING COST TO THE PLAINTIFF WOULD
18 BE RECOVERABLE AS DAMAGES TO THE PLAINTIFF, AND I BELIEVE
19 THAT THE TESTIMONY WAS SOMETHING LIKE OVER THE PERIOD OF TIME
20 THAT WE'RE TALKING ABOUT THE INCREASED SHIPPING COST WAS
21 SOMETHING LIKE \$457,000. I FORGET THE EXACT NUMBER. Y'ALL
22 WILL HAVE IT AND YOU CAN PUT IT IN THE ORDER. WHAT WAS THE
23 EXACT NUMBER, DO YOU RECALL?

24 **MR. SIMMONS:** THAT'S APPROXIMATELY IT.

25 **THE COURT:** ALL RIGHT. NOW, IT CERTAINLY IS THE BURDEN

RULING

1 OF PROOF OF THE PLAINTIFF TO PROVE THE DAMAGES AND -- TO
2 PROVE PROXIMATE CAUSE. WE'RE TALKING ABOUT A BUSINESS THAT
3 IN THE EARLY 1990s HAD GROSS SALES OF AROUND \$11 MILLION; IS
4 THAT CORRECT?

5 MR. SIMMONS: THAT'S CORRECT.

6 THE COURT: AND THE \$457,000 FIGURE IS A TOTAL FIGURE
7 OF INCREASED SHIPPING COST OVER WHAT NUMBER OF YEARS?

8 MR. SIMMONS: '98 TO 2003.

9 THE COURT: SO ABOUT -- A LITTLE OVER FIVE YEARS?

10 MR. SIMMONS: YES, SIR.

11 THE COURT: OR AROUND FIVE YEARS. ALL RIGHT. SO THAT
12 WOULD MEAN THAT THE AVERAGE IS SOMETHING LIKE NINETY, MAYBE A
13 HUNDRED THOUSAND DOLLARS A YEAR IN INCREASED SHIPPING COST.

14 NOW, IT'S DIFFICULT FOR ME TO -- AND I REALIZE THERE IS
15 MORE THAN THAT TOO. MR. GROOME SAYS, "WE DID MORE THAN JUST
16 BRING PAPER INTO OUR MILL, PROCESS IT AND SEND IT OUT TO OUR
17 CUSTOMERS. WE BROUGHT OTHER PROCESSORS PAPER INTO OUR MILL
18 AND WE LOST THAT BUSINESS BECAUSE WE COULDN'T DO -- BRING IT
19 IN BY RAIL. BECAUSE THE WAY WE'D HANDLE IT WAS BRING IT IN,
20 UNLOAD IT FROM THE RAIL CAR, CUT IT IN HALF, DO WHATEVER WE
21 DID TO IT, PUT IT BACK ON THE RAIL CAR. IT'S NOT OUR PAPER.
22 THEY'RE NOT OUR CUSTOMER. THEY'RE SELLING TO OTHER
23 CUSTOMERS. PERHAPS THEY'RE EVEN OUR COMPETITORS. BUT WE
24 EARN SUBSTANTIAL PROFIT OFF OF THAT FIGURE." UNLESS I'M
25 WRONG, THERE IS NO FIGURE FOR THAT LOSS IN THE RECORD, IS

RULING

1 THERE?

2 MR. SIMMONS: I THINK THAT'S CORRECT, YOUR HONOR.

3 THE COURT: OKAY. SO IT WOULD -- IT'S IMPOSSIBLE THEN
4 FOR ME TO SAY WHAT'S THE IMPACT ON THE VIABILITY OF THE
5 BUSINESS FROM THAT ASPECT OF LOST REVENUE. I MIGHT COULD SAY
6 THAT IT WAS SIGNIFICANT. I MIGHT COULD SAY THAT IT WAS
7 INSIGNIFICANT. BUT IN TERMS OF PUTTING A SPECIFIC DOLLAR
8 FIGURE OR A PERCENTAGE FIGURE ON IT, I COULDN'T DO IT AS A
9 FINDER OF FACT.

10 IT'S DIFFICULT FOR ME TO CONCEIVE HOW AN \$11 MILLION OR
11 EVEN A \$6 MILLION GROSS REVENUE BUSINESS COULD BE PUT OUT OF
12 BUSINESS BY A \$100,000 A YEAR INCREASED COST IN SHIPPING.
13 NOW, I DON'T HAVE ANY DOUBT THAT THAT WOULD HAVE -- YOU KNOW,
14 EVEN THOUGH THERE IS A LOT OF MONEY GOING THROUGH THAT
15 BUSINESS EVERY YEAR, YOU KNOW, THAT MONEY MIGHT HAVE COME --
16 THAT \$100,000 MIGHT HAVE COME DIRECTLY OUT OF MR. GROOME'S
17 POCKET. MAYBE HIS ANNUAL SALARY GOES FROM TWO HUNDRED TO ONE
18 HUNDRED. THAT'S PROBABLY WHERE IT WOULD HAVE COME FROM. BUT
19 TO SAY THAT THAT IS HOW THAT BUSINESS FAILED IS, TO ME,
20 STRETCHING IT. YOU KNOW, THERE ARE OTHER FACTORS THAT WERE
21 DISCUSSED IN THAT LETTER THAT MR. MARION DISCUSSED IN HIS
22 CLOSING ARGUMENT.

23 IT'S NOT FOR ME TO SAY WHAT CAUSED THE FAILURE OF THAT
24 BUSINESS. IT IS FOR ME TO SAY WHETHER OR NOT THE PLAINTIFF
25 HAS PROVEN BY THE PREPONDERANCE OF THE EVIDENCE THAT THE

RULING

1 FAILURE OF THE DEFENDANT TO PROVIDE RAIL SERVICE TO THE
2 PLAINTIFF IS A PROXIMATE CAUSE OF THE DAMAGES THAT GO BEYOND
3 THE INCREASE IN SHIPPING COST. AND I'M COMPELLED ON THE
4 EVIDENCE THAT IS PRESENTED HERE TO FIND THAT THE PLAINTIFF
5 HAS FAILED TO MEET THAT BURDEN OF PROOF, THAT THE INCREASE IN
6 SHIPPING COST WOULD BE, EVEN IF LIABILITY IS ESTABLISHED, THE
7 CAP ON THE DAMAGES.

8 AND SO, IN LIGHT OF THAT, IT'S NOT CRITICAL, BUT I ALSO
9 BELIEVE THAT THE LOSS IN SALARY TO THE -- TO MR. GROOME, THE
10 FACT THAT HE HAD TO PUT MONEY OUT -- TAKE MONEY OUT OF HIS
11 PROFIT SHARING PLAN TO FUND THE BUSINESS IS ALL NOT RELEVANT.
12 NONE OF THAT IS IMPORTANT. WHAT WOULD HAVE BEEN IMPORTANT IS
13 THE LOST PROFIT TO GROOME AND ASSOCIATES. AND HOW THE
14 BUSINESS WAS FINANCED DURING THAT TIME IS NOT REALLY PART OF
15 THE DAMAGES ANALYSIS.

16 SO NOW I HAVE -- I BELIEVE THAT I HAVE COVERED -- LET ME
17 CHECK. (PAUSE) I HAVEN'T DISCUSSED EVERY PIECE OF EVIDENCE
18 I -- FOR EXAMPLE, A POINT WAS MADE THAT SOUNDS COMPELLING BY
19 MR. SIMMONS, THAT THE DEFENDANT NEVER ACTUALLY TOOK A VOTE ON
20 WHETHER OR NOT THEY WERE GOING TO PROVIDE RAIL SERVICE ON
21 THIS LINE.

22 I THINK THAT THE ROLE OF THE COURT HERE IS TO LOOK AT IT
23 A LITTLE BIT DIFFERENTLY. THE ROLE OF IT IS TO LOOK
24 OBJECTIVELY AT WHETHER OR NOT IT WAS REASONABLE TO PROVIDE
25 SERVICE, NOT SUBJECTIVELY AT THE SPECIFIC ACTS OR FAILURES TO

RULING

1 ACT OF THE DEFENDANT. AND WHEN I HAVE DONE THAT OBJECTIVE
2 ANALYSIS, I HAVE SPELLED OUT MY RULING.

3 NOW, IS THERE ANYTHING ELSE THAT I -- THAT EITHER SIDE
4 THINKS I HAVE NOT ADDRESSED?

5 **MR. MARION:** THE ONLY THING, YOUR HONOR, YOU ALLOWED
6 THE AMENDMENT TO THE COMPLAINT OF PROMISSORY ESTOPPEL.

7 **THE COURT:** OH, YEAH. AND I INVITED THAT, I KNOW, BY
8 MAKING THAT -- BY RAISING THAT QUESTION TO MR. SIMMONS ON THE
9 FIRST DAY.

10 THERE ARE TWO ELEMENTS THAT ARE -- THAT ARE -- AT LEAST
11 TWO ELEMENTS THAT ARE PROBLEMATIC FOR THE PLAINTIFF THERE.
12 THE FIRST IS, AS MR. MARION POINTS OUT, THE PROMISE MUST BE
13 UNAMBIGUOUS ON ITS TERMS. AND AT BEST -- AT BEST, WHAT THE
14 STATEMENTS WERE OR STATEMENT WAS FROM MR. SEALS IS, "WE'VE
15 GOT \$500,000 AND WE'RE GOING TO FIX THE LINE." THERE IS NO
16 TIMING IN IT. THERE'S NO -- AND I THINK THAT IS PROBABLY THE
17 MOST IMPORTANT THING. I MEAN, I THINK THAT THAT GOES BOTH TO
18 THE REASONABLENESS OF THE RELIANCE AND TO THE UNAMBIGUOUS
19 NATURE OF THE PROMISE. IF THERE IS NO INDICATION AS TO WHEN
20 THE REPAIR IS GOING TO BE COMPLETED, THEN LIABILITY BECOMES
21 -- THAT'S WHY THAT'S AN ELEMENT. BECAUSE HERE MR. GROOMES IS
22 SAYING, "I'M MAKING A DECISION REGARDING HOW I RUN MY
23 BUSINESS," A FIVE TO TEN MILLION DOLLAR A YEAR BUSINESS,
24 "BASED ON A PROMISE THE YOU MADE." AND THAT'S WHY THAT
25 PROMISE HAS TO BE UNAMBIGUOUS. AND AT BEST, IT'S AMBIGUOUS

RULING

1 BECAUSE IT DOESN'T SPELL OUT A TIME FRAME. AND ON THE
2 CONTEXT OF THIS CASE, THE LONGER THE TIME GOES BETWEEN THE
3 TIME THE STATEMENT IS MADE AND THE LINE IS FIXED, THE MORE
4 DISADVANTAGEOUS IT IS TO MR. GROOMES TO RELY ON THAT PROMISE.
5 SO IT IS AN -- IT IS AN AMBIGUOUS PROMISE AS -- LOOKING, I
6 WOULD THINK, AT THE THING MOST FAVORABLE TO MR. GROOMES.

7 AND FRANKLY, AS TO NUMBER TWO, AND REALLY AS TO NUMBER
8 THREE ALSO, IT'S JUST -- IN THE CONTEXT OF THIS CASE, WHEN
9 MR. GROOMES SEES IN 1998 THAT HE'S LOST RAIL SERVICE, PUTS
10 HIS BUILDING ON THE MARKET, IT'S NOT REASONABLE TO RELY ON A
11 STATEMENT MADE BY THE COUNTY ADMINISTRATOR WITH NO EVIDENCE
12 THAT IT'S BACKED UP BY A RESOLUTION OF EITHER THE BOARD OF
13 THE ECONOMIC DEVELOPMENT BOARD -- CORPORATION OR THE BOARD OF
14 THE COUNTY. IT'S JUST NOT REASONABLE TO RELY ON THAT TO THE
15 EXTENT THAT YOU ALLOW A BUSINESS OF THAT MAGNITUDE TO UNDERGO
16 THAT KIND OF FUNDAMENTAL CHANGE IN THE WAY IT RECEIVES ITS
17 RESOURCES AND DELIVERS ITS PRODUCTS.

18 IT IS IMPORTANT AS MR. SEALS POINTS OUT THAT THIS IS A
19 GOVERNMENTAL ENTITY, AND THE GOVERNMENTAL ENTITY CAN'T SPEND
20 A HALF A MILLION DOLLARS WITHOUT DOING A LOT OF THINGS --
21 COMPLYING WITH THE PROCUREMENT CODE -- AND CERTAINLY THEY'VE
22 GOT HAVE A FORMAL ACTION BY THE BOARD.

23 AND SO -- I DID ALLOW THE AMENDMENT PRIMARILY BECAUSE I
24 WAS LOOKING AT THE ELEMENTS WHEN I ALLOWED IT, AND I REALIZED
25 THAT ON THE FACTS OF THIS CASE IT WAS SIMPLY NOT GOING TO BE

RULING

1 POSSIBLE TO FIND LIABILITY FOR THE PLAINTIFF ON THOSE FACTS.

2 I -- ALL RIGHT. ANYTHING ELSE?

3 MR. MARION: NOTHING FROM THE DEFENDANT, YOUR HONOR.

4 THE COURT: MR. SIMMONS?

5 MR. SIMMONS: NOTHING FROM THE PLAINTIFF, YOUR HONOR.

6 THE COURT: ALL RIGHT. THEN I'M GOING TO TAKE A SHORT
7 BREAK AND I'LL GET BACK TO THESE OTHER CASES IN JUST A
8 MINUTE.

9 YOU GOING TO PREPARE AN ORDER?

10 MR. MARION: YES, SIR, WE'LL PREPARE AN ORDER.

11 THE COURT: AND IT DOESN'T NEED TO BE A REAL LONG
12 ORDER. BUT, I MEAN, IT'S GOING TO HAVE TO BE FIVE OR TEN
13 PAGES, I GUESS.

14 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 24th DAY OF MARCH 2004.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 8, 2004



DAWN V. KOFFSKEY
COURT REPORTER