

225117

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. NOR 42108

**THE SPRINGFIELD TERMINAL RAILWAY COMPANY --
PETITION FOR DECLARATORY ORDER**

**MOTION OF RESPONDENT TO COMPEL RESPONSES TO
DISCOVERY REQUESTS
AND ENLARGE SCHEDULING DEADLINES**

**Daniel L. Rosenthal, Esq.
Verrill Dana, LLP
One Portland Square
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(207) 774-4000**

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AND ENLARGE SCHEDULING DEADLINES**

Respondent Fore River Warehousing and Storage Co., Inc. ("Fore River") hereby moves to compel Petitioner Springfield Terminal Railway Company ("STRC") to provide the information requested in Fore River's discovery requests, and to enlarge the scheduling deadlines in this matter. As grounds therefor, Fore River states as follows:

1. On March 17, 2009, Fore River served Interrogatories and Requests for Production of Documents upon counsel to STRC.
2. STRC's responses were due on or before April 1, 2009.
3. As of April 14, STRC had not objected or provided any responses. On that day, the undersigned counsel inquired of counsel to STRC with respect to when STRC would respond. (Exhibit A.)
4. On April 17, 2009, counsel to STRC stated that he would "check with client to determine status and get back to you shortly." (Exhibit A.)
5. As of May 4, 2009, STRC still had not objected or provided any responses. On that day, the undersigned counsel again inquired of counsel to STRC with respect to when STRC would respond. (Exhibit A.)

6. On May 8, 2009, counsel to STRC stated that he had been informed that STRC had mailed discovery responses to him and that he hoped to be able to turn the information around to the undersigned counsel on Tuesday, May 12. (Exhibit A.)
7. As of today's date, no objections or any other responses have been received.
8. The present deadlines in this matter are as follows:
 - a. July 1, 2009: Discovery deadline
 - b. September 1, 2009: Deadline for Fore River to file reply statement
 - c. September 25, 2009: Deadline for STRC to file rebuttal statement
9. Given that as of May 18, 2009, STRC still has not responded to discovery requests served on March 17, 2009, and given that the discovery deadline is approximately six and a half weeks away, Fore River requires additional time to review STRC's responses once they are received, and to conduct additional discovery based on such responses.

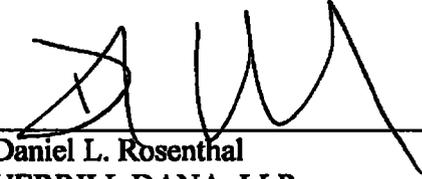
WHEREFORE, Fore River respectfully requests that:

- (1) STRC be compelled to provide the discovery requested;
- (2) a new scheduling order be issued consistent with what would have been the sequence of events had STRC responded to Fore River's discovery requests on or before the April 1, 2009 deadline to do so:
 - Discovery deadline: three months from the date that STRC serves responses to Fore River's discovery requests;
 - Deadline for Fore River to file reply statement: two months from the discovery deadline; and

- **Deadline for STRC to file rebuttal statement: twenty-four days after the deadline for Fore River to file reply statement.**

Fore River also requests that it be awarded its reasonable expenses, including attorneys' fees, caused by STRC's failure to respond to Fore River's discovery requests.

Dated: May 18, 2009



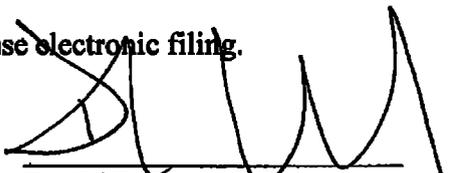
**Daniel L. Rosenthal
VERRILL DANA, LLP
P.O. Box 586
One Portland Square
Portland, ME 04112-0586
(207) 774-4000**

**Attorney for Respondent Fore River
Warehousing & Storage Co., Inc.**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing Motion of Respondent to Compel Responses to Discovery Requests and Enlarge Scheduling Deadlines on all parties of record in this proceeding, by furnishing a copy to Keith R. Jacques, Attorney for Springfield Terminal Railway Company, Smith Elliott Smith & Garney, 199 Main Street, PO Box 1179, Saco, ME 04072 via electronic mail this 18th day of May 2009, per agreement of the parties to use electronic filing.

Dated: May 18, 2009



**Daniel L. Rosenthal
Verrill Dana, LLP
One Portland Square
Portland, ME 04112-0586
(207) 774-4000**

**Attorney for Respondent
Fore River Warehousing &
Storage Co., Inc.**

Rosenthal, Daniel

From: Keith Jacques [kjacques@sesg.com]
Sent: Friday, May 08, 2009 4:53 PM
To: Rosenthal, Daniel
Subject: RE: STRC v. Fore River -- Discovery responses

Dan:

I understand from my client that the discovery responses were mailed to me today. I am out of the office on Monday for a minor surgical procedure but will be in the office on Tuesday. Hopefully, I can turn it around on Tuesday.

Keith



Keith Jacques, Esq.
Smith Elliott Smith & Garney, P.A.
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PO Box 1179
Saco, ME 04072
(207) 282-1527
www.sesgalloynys.com

-----Original Message-----

From: Rosenthal, Daniel [mailto:drosenthal@verrilldana.com]
Sent: Monday, May 04, 2009 8:53 AM
To: Keith Jacques
Subject: RE: STRC v. Fore River -- Discovery responses

Keith,

I received the complaint you filed in federal court. I will take a look, talk with my client about accepting service, and get back to you.

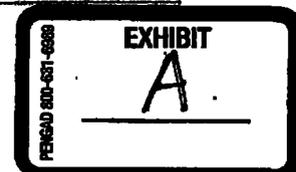
Before I do that, however, I need to know where we are regarding discovery. STRC's responses were due over a month ago. If STRC wants to talk about resolving this case that's fine (I don't believe we ever heard back on our settlement offer), but if not then we need to have STRC's responses ASAP.

Thanks.

Dan

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(207) 774-7499 (f)
drosenthal@verrilldana.com

From: Keith Jacques [mailto:kjacques@sesg.com]



Sent: Friday, April 17, 2009 8:46 AM
To: Rosenthal, Daniel
Subject: RE: STRC v. Fore River -- Discovery responses

Dan:

I will check with client to determine status and get back to you shortly.

Keith



Keith Jacques, Esq.
Smith Elliott Smith & Garmey, P.A.
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-----Original Message-----

From: Rosenthal, Daniel [mailto:drosenthal@verrilldana.com]
Sent: Tuesday, April 14, 2009 12:35 PM
To: Keith Jacques
Subject: STRC v. Fore River -- Discovery responses

Keith,

Can you please advise regarding STRC's responses to the discovery requests that I sent out on March 17? By my calculation, responses were due April 1. Fortunately the STB has granted our motion, but we still do not have a ton of time in this case. I'd appreciate your letting me know when I can expect the responses.

Thanks.

Dan

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Thank you. Verrill Dana LLP

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Thank you. Verrill Dana LLP