

# MAYER • BROWN

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August 28, 2009

## VIA HAND-DELIVERY

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

*Sub 1190X*

Re: STB Docket No. AB-167, *Consolidated Rail Corporation—Abandonment Exemption—In Hudson County, NJ*; STB Docket No. AB-55 (Sub-No. 690X), *CSX Transportation, Inc.—Discontinuance of Service Exemption—In Hudson County, NJ*; STB Docket No. AB-290 (Sub-No. 313X), *Norfolk Southern Railway Co.—Discontinuance of Service Exemption—In Hudson County, NJ*

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ENTERED  
Office of Proceedings

AUG 28 2009

Part of  
Public Record

Dear Secretary Quinlan:

Please enter the appearances of Robert M. Jenkins III and Adam C. Sloane, Mayer Brown LLP, 1999 K Street, NW, Washington, DC 20006, on behalf of Consolidated Rail Corporation (“Conrail”) in the above-captioned proceedings.

Also, we are in receipt of a “Motion for Protective Order” filed August 7, 2009, in the above proceedings by James Riffin. In an accompanying “Offer of Financial Assistance” Mr. Riffin and Eric Strohmeyer assert that the “Protective Order contains a confidential personal financial statement, which personal financial statement demonstrates the Offerors are ‘financially responsible’” (¶ 9). To our knowledge, the Board has not approved the Protective Order, and Conrail has not otherwise received a copy of the financial statement referenced by Messrs. Riffin and Strohmeyer.

Conrail has no objection to the proposed Protective Order and asks that the Board approve the proposed Protective Order so that Conrail’s outside counsel and John K. Enright, Associate General Counsel for Conrail, may obtain a copy of the financial statement filed under seal with the Board. In anticipation of that approval, enclosed are signed undertakings by Messrs. Jenkins, Sloane, and Enright. By copy of this letter, we ask that Messrs. Riffin and Strohmeyer forward whatever material they filed under seal with the Board to the undersigned and to Mr. Enright as soon as the Board approves the Protective Order. Further, in view of the September 11 deadline set by the Board’s Show Cause Order dated August 12, 2009, for

Anne K. Quinlan  
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Conrail's reply to Messrs. Strohmeier and Riffin's response to that Order, we ask that they forward the requested material to us by commercial carrier for overnight delivery.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "RMJ", with a long horizontal flourish extending to the right.

Robert M. Jenkins III

cc: John K. Enright  
James Riffin (w/ attachments) (by Overnight Express)  
Eric Strohmeier (w/ attachments) (by Overnight Express)

Enclosures

RMJ/bs

Enclosure

**UNDERTAKING**

**HIGHLY CONFIDENTIAL MATERIAL**

I, ROBERT M. JENKINS III, have read the Protective Order governing the filing of Highly Confidential Information by James Riffin ("Riffin") in STB Docket No. AB-167 (Sub. No. 1190X), understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under the Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket No. AB-167 (Sub. No. 1190X) or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Riffin shall be entitled to specific performance and injunctive and / or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all other remedies available at law or equity.

Signed: 

Address: 1999 K STREET, NW

Position: PARTNER

WASHINGTON, DC 20006

Affiliation: MAYER BROWN LLP

Telephone: (202) 263-3261

Dated: 8/28/09

**UNDERTAKING**

**HIGHLY CONFIDENTIAL MATERIAL**

I, Adam C. Sloane, have read the Protective Order governing the filing of Highly Confidential Information by James Riffin ("Riffin") in STB Docket No. AB-167 (Sub. No. 1190X), understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under the Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket No. AB-167 (Sub. No. 1190X) or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has executed an Undertaking in the form hereof.

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Signed:  Address: 1999 K Street, NW  
Position: Counsel Washington DC 20006  
Affiliation: Mayer Brown LLP Telephone: (202) ~~544~~-263-3269  
Dated: 8/28/09



## APPENDIX

### PROTECTIVE ORDER

1. For purposes of this Protective Order, "Highly Confidential Information" means the data and documents appended to this Protective Order and furnished to the Board by James Riffin ("Riffin") in connection with his Offer of Financial Assistance, in the above-captioned matter, STB Docket No. AB-167 (Sub. No. 1190X).
2. Highly Confidential information shall be provided to John K. Enright, Associate General Counsel for Conrail, or to Outside Counsel of any party to this proceeding, only pursuant to this Protective Order and only upon execution and prior delivery to Riffin of the attached Undertaking. Highly Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or any other purpose. Highly Confidential Information shall not be provided or disclosed to any person or entity who is not John K. Enright or Outside Counsel to a party to this proceeding.
3. Highly Confidential Information shall not be disclosed in any way or to any person without the prior written consent of Riffin, or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms and has executed the attached Undertaking prior to receiving access to this information.
4. Any documents containing Highly Confidential Information must be destroyed, and notice of such destruction must be served on Riffin, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.
5. If the Board retains the Highly Confidential Information, it shall, in order to keep it Highly Confidential, threat the information in accordance with the procedure set forth at 49 CFR 1104.14.
6. If any party intends to use Highly Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such Highly Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Highly Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Highly Confidential Information in accordance with the Protective Order.
7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

**UNDERTAKING**

**HIGHLY CONFIDENTIAL MATERIAL**

I, JOHN K. EDRIGHT, have read the Protective Order governing the filing of Highly Confidential Information by James Riffin ("Riffin") in STB Docket No. AB-167 (Sub. No. 1190X), understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under the Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket No. AB-167 (Sub. No. 1190X) or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Riffin shall be entitled to specific performance and injunctive and / or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all other remedies available at law or equity.

Signed: John K. Edrigh Address: 1717 Arch Street, 32nd Floor  
Position: Associate General Counsel Philadelphia, PA 19103  
Affiliation: Consolidated Rail Corp. Telephone: 215-209-5012  
Dated: August 28, 2009