

225833

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. NOR 42108**

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

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**MOTION OF RESPONDENT TO COMPEL PRODUCTION OF DOCUMENTS  
AND ENLARGE SCHEDULING DEADLINES**

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

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**THE SPRINGFIELD TERMINAL RAILWAY COMPANY --  
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**MOTION OF RESPONDENT TO COMPEL PRODUCTION OF DOCUMENTS  
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 produce documents, and to enlarge the scheduling deadlines in this matter. As grounds therefor, Fore River states as follows:

1. As set forth in the Decision served on June 22, 2009 in this matter, Fore River served interrogatories and requests for production of documents on STRC on March 17, 2009. After Fore River filed a motion to compel, STRC provided unsigned responses on May 22, 2009, and signed responses on May 28, 2009.
2. The signed responses, incorporating the discovery requests, are attached hereto as Exhibit A. STRC did not object to any of the requests.
3. The June 22 Decision set a discovery deadline of August 28, 2009.
4. On July 27, counsel for Fore River contacted counsel for STRC, requesting dates for a deposition of STRC prior to the discovery deadline. On August 10, counsel followed up on that request. (See Exhibit B hereto.)
5. Counsel for Fore River agreed to conduct STRC's deposition on September 1, based on STRC's scheduling issues.

6. In STRC's deposition, several categories of documents were referenced that had not been produced, but that were subject to Fore River's discovery requests. A table summarizing the requested documents, and the discovery requests to which they are responsive, is attached as Exhibit C hereto.
7. Counsel for Fore River requested the documents during the deposition and followed up by letter dated September 2. (Exhibit D hereto.)
8. Counsel for Fore River followed up again on September 16, based on having reviewed the transcript and identifying another document referenced by STRC therein. (Exhibit E hereto.)
9. Counsel for Fore River followed up again on September 29, and indicated that if the documents were not received by October 2, then Fore River would need to file a motion to compel. (Exhibit F hereto.)
10. The documents have not been received as of the time of this filing.
11. The present deadlines in this matter are as follows:
  - a. October 28, 2009: Deadline for Fore River to file reply statement
  - b. November 23, 2009: Deadline for STRC to file rebuttal statement
12. Given that Fore River still has not received documents requested on March 17, and that Fore River's reply statement deadline is approaching, Fore River requires additional time to review the documents once they are received, and to prepare its reply statement accordingly.

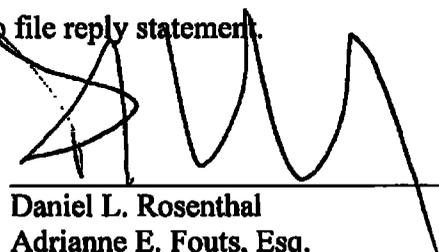
**WHEREFORE, Fore River respectfully requests that:**

- (1) STRC be compelled to provide the documents requested; and

(2) a new scheduling order be issued consistent with what would have been the sequence of events had STRC produced the documents on or before the discovery deadline of August 28:

- Deadline for Fore River to file reply statement: two months from the date when the documents are produced; and
- Deadline for STRC to file rebuttal statement: twenty-six days after the deadline for Fore River to file reply statement.

Dated: October 6, 2009



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

Attorneys 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 Production of Documents 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 & Garmey, 199 Main Street, PO Box 1179, Saco, ME 04072 via electronic mail this 6th day of October 2009, per agreement of the parties to use electronic filing.

Dated: October 6, 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.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. NOR 42108**

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

---

**PETITIONER SPRINGFIELD TERMINAL RAILWAY  
COMPANY'S RESPONSE TO REQUEST FOR  
PRODUCTION OF DOCUMENTS**

Petitioner Springfield Terminal Railway Company ("Springfield Terminal") responds to Respondent Fore River Warehousing and Storage Co., Inc.'s Request for Production as follows:

**DOCUMENTS REQUESTED**

1. All documents identified, reviewed, consulted, or used in any way in the preparation of your Petition and Complaint.

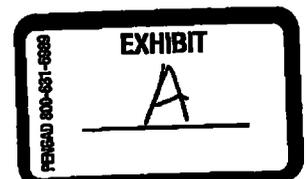
**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

2. All documents referred to in your Petition and Complaint.

**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

3. All documents supporting, referenced in, identified, reviewed, consulted, relied on or used in any way in preparing your answers to Fore River's First Set of Interrogatories.

**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.



**4. All correspondence, memoranda and notes relating to the claims for payment set forth in your Petition and Complaint.**

**RESPONSE: Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.**

**5. All documents evidencing any statements, whether oral or written, related to the allegations set forth in your Petition and Complaint.**

**RESPONSE: Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.**

**6. All documents consisting of, constituting, evidencing, reflecting or otherwise relating to communications between any two people employed by or on behalf of STRC, relating to the claims for payment set forth in your Petition and Complaint, including without limitation the Demurrage Charges and the shipments or railcars as to which STRC seeks to collect the Demurrage Charges.**

**RESPONSE: Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.**

**7. All documents consisting of, constituting, evidencing, reflecting or otherwise relating to communications between you and Fore River, relating to the claims for payment set forth in your Petition and Complaint, including without limitation the Demurrage Charges and the shipments or railcars as to which STRC seeks to collect the Demurrage Charges.**

**RESPONSE: Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.**

**8. All documents consisting of, constituting, evidencing, reflecting or otherwise relating to any contract for transportation or agreement by which STRC alleges that it had or has the right**

to assess, impose or collect the Demurrage Charges against Fore River, including without limitation any document consisting of, evidencing, reflecting or otherwise relating to any agreement or acceptance by Fore River of such a right of STRC.

**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

9. All documents consisting of, constituting, evidencing, reflecting or otherwise relating to the allegation by STRC that Fore River was a consignee with respect to the shipments or railcars as to which STRC seeks to collect the Demurrage Charges.

**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

10. All bills of lading relating to the shipments or railcars as to which STRC seeks to collect the Demurrage Charges.

**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

11. All documents reflecting the timing of the tender, notification, placement (actual or constructive) or delivery by STRC to Fore River, and release by Fore River back to STRC, of the shipments or railcars as to which STRC seeks to collect the Demurrage Charges.

**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

12. All documents reflecting the identity of any party that decided when each shipment or railcar, as to which STRC seeks to collect the Demurrage Charges, would be tendered, notified, placed (actually or constructively) or delivered to Fore River.

**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

13. All documents reflecting the identity of any party that decided how many of the shipments or railcars, as to which STRC seeks to collect the Demurrage Charges, would be tendered, notified, placed (actually or constructively) or delivered to Fore River at any given time.

**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

14. All documents reflecting the frequency with which STRC provided switching services at Fore River's facility (i.e., delivered, and removed railcars to and from Fore River's facility) during the time period(s) in which STRC alleges that the Demurrage Charges accrued.

**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

15 All documents reflecting the manner in which STRC provided switching services at Fore River's facility (i.e., delivered and removed railcars to and from Fore River's facility) during the time period in which STRC alleges that the Demurrage Charges accrued, including without limitation any policy or practice on the part of STRC relating to removing cars on a first-in/first-out basis.

**RESPONSE:** Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

16. All documents relating to any effort by STRC to receive payment of the Demurrage Charges from any party other than Fore River.

**RESPONSE:** None.

17. All reports, spreadsheets, and records relating to shipments or railcars subject to storage-in-transit charges by STRC, for all time periods in which the Demurrage Charges allegedly accrued, identifying the subject shipments or railcars, the rates charged by STRC for storage-in-transit, and the party charged.

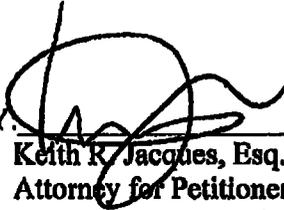
RESPONSE: See Response to Interrogatory #12 indicating that no cars were on SIT at the same time accruing demurrage charges.

18. All documents upon which you intend to rely or to which you intend to make reference at the trial of this case.

RESPONSE: Documents responsive to this request are attached to Springfield Terminal's Answers to Interrogatories.

DATED at Saco, Maine this 22<sup>nd</sup> day of May, 2009.

SMITH ELLIOTT SMITH & GARMEY,

BY: 

\_\_\_\_\_  
Keith R. Jacques, Esq.  
Attorney for Petitioner  
Springfield Terminal Railway Company

199 Main Street  
P.O. Box 1179  
Saco, ME 04072  
(207) 282-1527

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. NOR 42108**

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

---

**PETITIONER SPRINGFIELD TERMINAL RAILWAY  
COMPANY'S ANSWERS TO INTERROGATORIES**

Petitioner Springfield Terminal Railway Company ("Springfield Terminal") answers Respondent Fore River Warehousing and Storage Co., Inc.'s ("Fore River") Interrogatories as follows:

**INTERROGATORIES**

1. Identify each person answering, or assisting with answering these Interrogatories.

ANS. Michael Bostwick, Senior Vice President, Marketing & Sales, Pan Am Railways/Springfield Terminal Railway Company.

2. Identify each person having knowledge relating to any allegation in your Petition and Complaint, and for each person, state the substance of that person's knowledge.

ANS. See attached documents which list the various individuals from the Shipper, Consignee (Fore River) and the Railroad (Springfield Terminal Railway). These documents include numerous e-mail correspondence and letters exchanged between the parties.

3. Identify all persons you believe are or may be witnesses or who may have knowledge of the facts and circumstances or who may have knowledge pertinent to any allegation in your

**Petition and Complaint. As to each, please summarize the information you believe each person possesses.**

**ANS. See Response to Interrogatory #2.**

**4. Identify, state and describe the basis for your assertion that the Demurrage Charges can be assessed, imposed or collected against Fore River. Include in your answer any basis upon which you assert that Fore River ever agreed, expressly or implicitly, to be liable for the Demurrage Charges.**

**ANS. Springfield Terminal contends that the Demurrage Charges assessed against Fore River can be imposed based on the fact that the rate quotes which govern the traffic handled by Fore River are subject to the provisions of GTI Exempt Boxcar Circular No. 1. Item 6 of the Circular provides for the adoption of Rates and Charges including Demurrage provisions. Springfield Terminal asserts that Fore River implicitly agreed to be liable for Demurrage Charges based on Fore River's willingness to enter into arrangements with certain shippers to handle traffic consigned to Fore River. As consignee for the traffic, Fore River is the party responsible for the payment of any demurrage charges which accrue. A copy of ST 6004-A is attached.**

**5. State whether you have made any effort to collect the Demurrage Charges from any other party. If your answer is affirmative, identify state and describe:**

- a. The identity of the party from whom you attempted to collect the Demurrage Charges;**
- b. The details of your effort to collect the Demurrage Charges, including dates and descriptions of communications; and**
- c. The results of your effort to collect the Demurrage Charges;**

ANS. Springfield Terminal has not attempted to collect demurrage for the shipments in question from any other party.

6. Identify, state and describe all communications between STRC and Fore River relating to the Demurrage Charges.

ANS. See documents produced in Response to Interrogatories #2 and 3. See also attached documents which include the unpaid demurrage from 2003, 2004 and 2006 plus the corresponding demurrage bills with car by car detail.

7. Identify, state and describe the basis for your contention, including without limitation the contention in paragraph 12 of your Complaint, that Fore River was a consignee with respect to the shipments or railcars as to which STRC seeks to collect the Demurrage Charges.

ANS...See Response to Interrogatory #4. Attached are examples which demonstrate that Fore River Warehouse was the consignee. For shipments from International Paper, Bucksport, ME the electronic BOL/404 shows Fore River as the "Consignee Name". In addition, a copy of Springfield Terminals' waybill shows Fore River as the consignee. For shipments from International Paper, Rileys, ME, a hard copy BOL (IP Rileys was not transmitting electronic BOL/404's like their sister mill Bucksport) also shows Fore River on the "Consignee Name". Springfield Terminal's waybill also shows Fore River as the consignee.

8. Identify all parties that decided when each shipment or railcar, as to which STRC seeks to collect the Demurrage Charges, would be tendered, notified, placed (actually or constructively) or delivered to Fore River.

ANS. International Paper (Origins: Bucksport, ME and Rileys, ME) decided when each shipment would be tendered to Springfield Terminal. Springfield Terminal was responsible for

notifying Fore River of availability of railcars. Springfield Terminal also was responsible for actually and/or constructively placing or delivering railcars to Fore River.

9. Identify any party that decided how many of the shipments or railcars, as to which STRC seeks to collect the Demurrage Charges, would be tendered, notified, placed (actually or constructively) or delivered to Fore River at any given time.

ANS. International Paper at Bucksport, ME or International Paper at Rileys, ME was the party that determined how many shipments would be tendered to Fore River.

10. Identify the frequency with which STRC provided switching services at Fore River's facility (i.e., delivered and removed railcars to and from Fore River's facility) during the time period(s) in which STRC alleges that the Demurrage Charges accrued.

ANS. See May 26, 2006 letter from Mike Bostwick to Mike Cella indicating that as of May 2006, Pan Am was providing switching and rail movement services approximately three days per week. During this period, Springfield Terminal offered Fore River seven day a week switching. By e-mail dated June 1, 2006 from Mike Cella, Fore River rejected this request (see attached e-mail). Normal switching was three days per week. With an 18 car siding at Fore River, there was plenty of capacity on the rail side if Fore River had the capacity at their warehouse to throughput all the volume International Paper was providing Fore River. Railcars were processed through the Fore River facility. In May 2006, Pan Am performed 21 switches at Fore River. Since Fore River has an inbound throughput capacity of 18 railcars per day, it is evident that Fore River could have achieved a total of 378 railcars, thereby alleviating a large portion of the backlog. However, records show Fore River achieved a throughput of only 243 railcars during the month of May, 2006.

11. Identify, state and describe any policy or practice on the part of STRC relating to the manner of removing railcars from Fore River's facility, whether on a first in/first-out or any other basis, during the time period(s) in which STRC alleges that the Demurrage Charges accrued.

ANS. As this was long term storage of paper rolls, any car would do for a switch but some cars were ordered car specific by Fore River. Springfield Terminal wanted to bring 18 cars per switch which is the siding capacity but Fore River would only take particle switches as Fore River needed to clear out space before bringing new product into the warehouse. This limited the ability to work-off the backlog of cars and thus diminish the demurrage that was accruing.

12. State whether any railcar, as to which STRC seeks to collect the Demurrage Charges, was subject to a storage-in-transit arrangement at the same time that STRC contends that demurrage was accruing. If your answer is affirmative, identify the railcar(s), the amount of the storage-in-transit charges, and the other party to the storage-in-transit arrangement.

ANS. No cars were on SIT (Storage in Transit) at the same time accruing demurrage.

DATED at *N. Attleboro*, Massachusetts this *21<sup>st</sup>* day of May, 2009.



Michael Bostwiok, Sr. Vice President  
Marketing & Sales  
Pan Am Railways/Springfield Terminal  
Railway Company

**Sass, Sue**

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**From:** Rosenthal, Daniel  
**Sent:** Monday, August 10, 2009 4:08 PM  
**To:** 'Keith Jacques'  
**Subject:** RE: Status

Thanks, Keith. Can you let me know where we are on this? I understand it's August, but I have to deal with the discovery deadline.

Thanks.

Dan

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Verrill Dana, LLP  
One Portland Square  
P.O. Box 586  
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[drosenthal@verrilldana.com](mailto:drosenthal@verrilldana.com)

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**From:** Keith Jacques [<mailto:kjacques@sesg.com>]  
**Sent:** Sunday, August 02, 2009 4:14 PM  
**To:** Rosenthal, Daniel  
**Subject:** RE: Status

Dan:

I am awaiting word from my client re identity of person to be deposed and availability. I will follow up if I don't hear from them early this week.

Keith



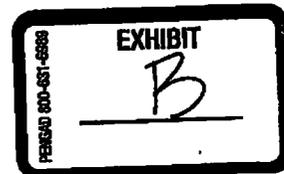
Keith Jacques, Esq.  
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-----Original Message-----

**From:** Rosenthal, Daniel [<mailto:drosenthal@verrilldana.com>]  
**Sent:** Monday, July 27, 2009 4:02 PM  
**To:** Keith Jacques  
**Subject:** Status

Keith,

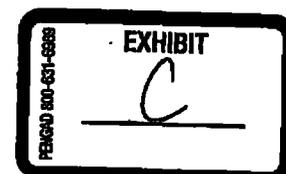
I'm sure you've seen the order denying our motion to dismiss. I'd like to reserve a date to take your client's deposition before the August 28 discovery deadline. August 25-27 would work for me. Can you please confirm that the date is held, or provide alternative dates, and I will follow up with a deposition notice? To the extent that you need to know the topics in order to check with particular individuals, the topics would include generally the subjects of our previous discovery requests. Thanks.



10/6/2009

Documents Requested	Relevant Discovery Request (*)
Records of the "orders" for delivery of rail cars that Fore River placed with STRC	RPD No. 3, 7, 11, 14, 15 Interrogatories No. 6, 10, 11
Records of communications from STRC to Fore River regarding constructive placement of rail cars	RPD No. 3, 7, 11, 14, 15 Interrogatories No. 6, 10, 11
The circular referenced in STRC's Answer to Interrogatory No. 4	Interrogatory No. 4
Records reflecting a change in status from storage-in-transit to inbound to Fore River	Interrogatory No. 12, 17
Records reflecting switches requested by Fore River, provided by STRC, and missed by STRC for the months of April, May, June and July 2006	RPD No. 3, 7, 11, 14, 15 Interrogatories No. 6, 10, 11
Side Track Agreement	RPD No. 7, 8
Legible bill of lading	RPD No. 10 Interrogatory No. 7

\* "RPD" = Fore River's Request for Production of Documents.



# Verrill Dana<sup>LLP</sup>

Attorneys at Law

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September 2, 2009

Keith R. Jacques, Esq.  
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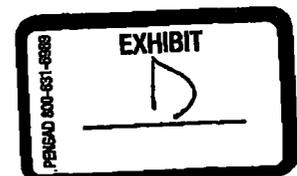
Re: Springfield Terminal Railway Company v. Fore River Warehousing  
and Storage Co., Inc.  
Docket No.: NOR 42108

Dear Keith:

This is to follow up on documents referenced by Michael Bostwick in his deposition yesterday. Please produce the following:

- Records of the "orders" for delivery of rail cars that Fore River placed with STRC;
- Records of communications from STRC to Fore River regarding constructive placement of rail cars;
- The circular referenced in STRC's Answer to Interrogatory No. 4;
- Records reflecting a change in status from storage-in-transit to inbound to Fore River; and
- Records reflecting switches requested by Fore River, provided by STRC, and missed by STRC for the months of April, May, June and July 2006.

I believe these items are all encompassed within Fore River's request for production of documents. In addition, you and Mr. Bostwick indicated yesterday that to the extent that consent may be required from Verso to produce records, such consent will be sought and obtained. To the extent that the transcript of yesterday's deposition contains references to additional documents, I will follow up accordingly.



**Sass, Sue**

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**From:** Rosenthal, Daniel  
**Sent:** Wednesday, September 16, 2009 10:11 AM  
**To:** 'Keith Jacques'  
**Cc:** Fouts, Adrienne  
**Subject:** STRC v. Fore River  
**Attachments:** Rosenthal ltr to Jacques 090209.pdf.PDF

Keith,

This is to follow up on our requests for materials referenced by Michael Bostwick in his deposition, as set forth in the attached.

In addition, Mr. Bostwick referenced a side track agreement (see page 35 of his deposition). Please provide a copy of that.

Finally, is there a version of the bill of lading produced by STRC in discovery, and marked as page 2 of Exhibit 10 to Mr. Bostwick's deposition, that is legible on the bottom? The version I have is largely illegible. We would appreciate a legible copy, including both sides or pages of the document. (There appears to be a reference on the bottom of the document to terms and conditions "on the back thereof.")

Thanks.

Dan

Daniel L. Rosenthal, Esq.  
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10/6/2009



# Verrill Dana<sup>LLP</sup>

Attorneys at Law

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September 29, 2009

Keith R. Jacques, Esq.  
Smith, Elliott Smith & Garmey, P.A.  
199 Main Street  
P.O. Box 1179  
Saco, ME 04072

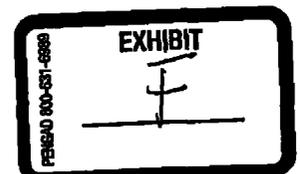
Re: Springfield Terminal Railway Company v. Fore River Warehousing  
and Storage Co., Inc.  
Docket No.: NOR 42108

Dear Keith:

This follows-up on my letter to you dated September 2, 2009, as well as my e-mail dated September 16, 2009. In the September 2 letter, I requested various documents that had been referenced by Michael Bostwick in his deposition. All of these materials were encompassed within our Request for Production of Documents, served on March 17, 2009. In the September 16 e-mail, I followed up on that request, asked for one more document, and inquired whether there was a more legible version of the bill of lading produced by STRC in discovery, and marked as page 2 of Exhibit 10 to Mr. Bostwick's deposition. We have yet to receive any of these materials. Please provide them by the end of this week, or we will need to move the STB to compel discovery once again.

In addition, I have your letter dated September 22, 2009, requesting 8 broad categories of documents. This marks the first time since this case began in 2006 that STRC has requested documents. On February 10, 2009, the STB set a discovery deadline of April 13, 2009. The STB then granted the parties' joint request to modify the schedule, and set a new deadline of July 1, 2009. Following STRC's failure to respond to our document requests and interrogatories, the STB then extended the discovery deadline once again, to August 28, 2009. In all that time, STRC never requested documents. While I agreed to produce Fore River deponents after the discovery deadline, STRC did not request documents and I did not offer to produce them. The exception to that is my recollection that I agreed to provide copies of Fore River's agreements with IP/Verso.

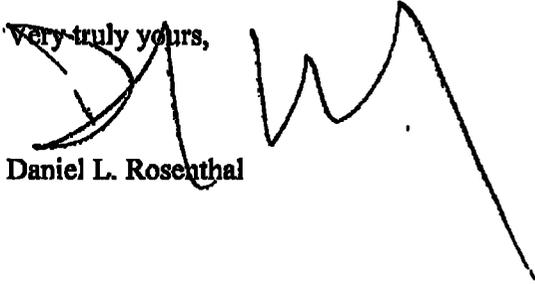
With the exception of the IP/Verso agreements, which require Verso's consent (which we will seek), we do not intend to produce the requested documents. STRC's request is far too broad and comes far too late given that the discovery deadline has already been extended several times, and given that Fore River has been pursuing discovery since March. STRC has had ample time to seek discovery and has chosen, for whatever reason, not to do so.



Keith R. Jacques, Esq.  
September 29, 2009  
Page 2

Please do not hesitate to call if you have any questions or wish to discuss this matter.

Very truly yours,

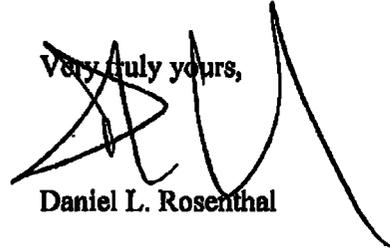
  
Daniel L. Rosenthal

DLR:sms  
cc: Michael Cella

Keith R. Jacques, Esq.  
September 2, 2009  
Page 2

Please do not hesitate to let me know if you have any questions or would like to discuss.

Very truly yours,

A handwritten signature in black ink, appearing to be 'DLR', written over the typed name 'Daniel L. Rosenthal'.

Daniel L. Rosenthal

DLR:sms  
Enclosure  
cc: Michael Cella