

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD34920

**SAVANNAH PORT TERMINAL RAILROAD, INC. —
PETITION FOR DECLARATORY ORDER**

**REPLY OF RESPONDENT CAPITAL CARGO, INC.
TO MOTION OF SAVANNAH PORT TERMINAL RAILROAD, INC.
TO STRIKE CAPITAL CARGO'S REBUTTAL
TO SPTR'S RESPONSE
TO CAPITAL CARGO'S MOTION TO DISMISS**

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Respondent Capital Cargo, Inc. ("Capital Cargo") hereby replies to the motion of Petitioner Savannah Port Terminal Railroad, Inc. ("SPTR") to strike Capital Cargo's rebuttal to SPTR's reply to Capital Cargo's motion to dismiss. The vast majority of SPTR's motion consists of a transparent attempt to have the last word.

While 49 C.F.R. § 1104.13(c) states that "[a] reply to a reply is not permitted," Capital Cargo does not believe that rule should bar Capital Cargo's rebuttal, based on historical practice before the STB. To the extent that Capital Cargo is mistaken, Capital Cargo respectfully requests leave to file the Rebuttal. Capital Cargo did not use the Rebuttal to simply reiterate points already made or to assert brand-new arguments, as SPTR suggests. Rather, Capital Cargo simply responded to the astonishing, unanticipated and wholly unfounded assertion that there was no contract between Capital Cargo and SPTR, and to the other misguided arguments in SPTR's response to Capital Cargo's motion.

SPTR's remaining arguments in the motion to strike amount to nothing more than a "sur-rebuttal" to Capital Cargo's rebuttal -- rehashing the same points under the guise

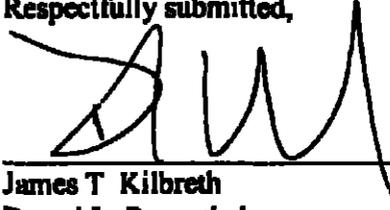
of a motion to strike -- and are therefore more inappropriate under section 1104.13(c) than the rebuttal itself. Indeed, SPTR devotes nearly five pages of its motion to arguing the merits of Capital Cargo's motion and SPTR's opposition thereto. SPTR does not point to anything that can properly be considered "redundant, irrelevant, immaterial, impertinent, or scandalous," 49 C.F.R. § 1104.8. Indeed, SPTR does not even cite section 1104.8. Rather, SPTR simply argues -- again -- that Capital Cargo is wrong.

Which side should prevail on the motion to dismiss is a question to be resolved on the motion to dismiss -- not on a motion to strike that is itself based on little more than indignantly-presented recitations of misguided arguments already made elsewhere. A reply by any other name is still a reply, and if 49 C.F.R. § 1104.13(c) bars Capital Cargo's rebuttal to SPTR's opposition to Capital Cargo's motion to dismiss, then it also bars the vast majority of SPTR's motion to strike -- and everything in the motion other than the reference to section 1104.13 should be disregarded in the STB's consideration of the motion to dismiss.

For the foregoing reasons, the motion to strike should be denied.

Dated: March 30, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JKR', written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to P. Campbell Ford, Esq., Attorney for Savannah Port Terminal Railroad, Ford, Miller & Waner, P.A., 1200 Riverplace Blvd , Suite 600, Jacksonville, Fl. 32207 via federal express this 30th day of March 2007.

Dated: March 30, 2007

Respectfully submitted,



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