

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Fortress Investment Group LLC, et al. -- Control --)	
Florida East Coast Railway, LLC)	Finance Docket No. 35031
)	

**PETITION BY APPLICANTS
FOR REVOCATION OF CLASS EXEMPTIONS**

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Dated: May 22, 2007

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SURFACE TRANSPORTATION BOARD**

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Pursuant to 49 U.S.C. § 10502(d), Fortress Investment Group LLC, on behalf of certain private equity funds managed by it and its affiliates (“Fortress”), Iron Horse Acquisition Holding LLC (“Iron Horse”), NEWCO, RailAmerica, Inc. (“RailAmerica”) and Florida East Coast Industries, Inc. (“FECI”) and its wholly-owned subsidiary, Florida East Coast Railway, LLC (“FECR”) (collectively, the “Applicants”), hereby petition the Board to revoke the class exemptions set forth at 49 C.F.R. §§ 1180.2(d)(2) and 1180.2(d)(3) with respect to the transaction proposed in the above-captioned proceeding.

BACKGROUND

Concurrently with the instant Petition, Applicants have filed with the Board an application (the “Application”) pursuant to 49 U.S.C. §§ 11323 *et seq.* and 49 C.F.R. §§ 1180.2(c) and 1180.4(c), for approval of the acquisition of control of FECR by NEWCO (and, indirectly, by Fortress). Because Fortress currently controls RailAmerica (and, indirectly, RailAmerica’s U.S. railroad subsidiaries), the proposed transaction is subject to prior Board approval pursuant to 49 U.S.C. § 11323(a)(5). As described in the Application, the proposed transaction will be carried out through a merger of FECI into Iron Horse Acquisition Sub Inc., a Florida corporation created for purposes of the proposed transaction (“Iron Horse Sub”) into FECI, and the subsequent transfer of FECR’s limited liability company interests to NEWCO, a

Delaware limited liability company that is an affiliate of Fortress. As a result of the proposed transaction, all of FECCI's transportation-related business would be owned by NEWCO, while FECCI's real estate business would be owned by a sister company, Iron Horse.

The proposed transaction qualifies for exemption pursuant to the class exemptions set forth at 49 C.F.R. §§ 1180.2(d)(2) and 1180.2(d)(3). Specifically, the acquisition of control of FECCR qualifies for the class exemption for the acquisition or continuance in control of a non-connecting carrier at 49 C.F.R. § 1180.2(d)(2). As described in the Application, FECCR and the RailAmerica Railroads operate in entirely separate geographic territories. None of the RailAmerica Railroads serves any point in common with FECCR. Thus, FECCR does not – indeed, it could not – connect with any railroad in the existing Fortress/RailAmerica corporate family. Nor is the proposed transaction part of a series of anticipated transactions that would connect FECCR with any other railroad controlled by Fortress or RailAmerica. The transaction does not involve any Class I rail carrier; FECCR is a Class II railroad, and the RailAmerica Railroads consist of one Class II railroad (the Central Oregon & Pacific Railroad, Inc.) and a variety of Class III carriers.

The proposed transfer of FECCR's limited liability company interests to NEWCO is a transaction within a corporate family within the meaning of 49 C.F.R. § 1180.2(d)(3). NEWCO and Iron Horse (which will control FECCI) are sister affiliates of Fortress. The proposed transfer of FECCR's interests from FECCI to NEWCO therefore constitutes a transfer between affiliates that are commonly controlled by Fortress. Moreover, as Exhibit 15 to Application (Operating Plan-Minor) demonstrates, the proposed transaction would not result in any adverse change in service levels or significant operational changes. Nor will the proposed transaction result in any change in the competitive balance with carriers outside the corporate family. FECCR and the

RailAmerica Railroads do not serve any common points or rail corridors, and no shipper will experience a reduction in the number of rail competitive options available to it as a result of the proposed transaction.

Thus, Applicants could have invoked the class exemptions set forth at 49 C.F.R. §§ 1180.2(d)(2) and 1180.2(d)(3) in this proceeding. However, there are important business reasons why Applicants have elected instead to proceed via a “minor” application under 49 U.S.C. § 11323. In particular, the inability to complete the transaction on or before December 31, 2007 would have significant adverse tax consequences. Such a result would, in turn, impose substantial additional costs on Applicants.

Under the Board’s regulations, a class exemption notice filed pursuant to 49 C.F.R. § 1180.2(d) generally becomes effective 30 days after the date of filing. *See* 49 C.F.R. § 1180.4(g). However, the Board’s procedures also contemplate that any party may file a petition to revoke a class exemption during the 30-day time period between the filing of the notice of exemption and its publication in the *Federal Register*. If the Board determines to conduct proceedings in response to such a petition to revoke, it may issue a “housekeeping stay” and prohibit the transaction from going forward until such proceedings are completed. Under the Board’s regulations, there is no statutory deadline for completion of proceedings on a petition to revoke a class exemption. By contrast, the Board’s review of a “minor” application filed pursuant to Section 11323 is subject to a statutory deadline of six months. *See* 49 U.S.C. § 11325(d). Thus, it is possible that the regulatory process under the class exemption procedures could take *longer* than the period for issuance of a final decision on a minor control application. In the instant case, such a delay would, in all likelihood, prevent Applicants from obtaining a

final STB decision in time to permit them to complete the transaction prior to December 31, 2007.

While Applicants do not believe that there exist any meritorious grounds for challenging the proposed transaction, they have elected to proceed under the minor application procedures in order to assure that the Board can issue a final decision in sufficient time to permit the transaction, if it is approved by the Board, to be completed prior to year-end. Applicants have filed, concurrently with the Application and the instant Petition, a Motion for Establishment of a Procedural Schedule requesting that the Board establish a schedule in this proceeding that would result in the issuance of a final decision approximately four months after the filing of the Application (with an effective date 30 days thereafter). The application procedures invoked by Applicants, and the proposed procedural schedule, will afford interested parties ample opportunity to comment on (and for the Board to consider) the proposed transaction, while mitigating the risk that the regulatory process might otherwise prevent completion of the transaction on or before December 31, 2007. Accordingly, revocation of the class exemptions to permit Applicants to file a formal application for approval of a “minor” transaction pursuant to 49 U.S.C. §§ 11323 *et seq.* and 49 C.F.R. §§ 1180.2(c) and 1180.4(c), is both necessary and appropriate in this case.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Board revoke the class exemptions set forth in 49 C.F.R. §§ 1180.2(d)(2) and 1180.2(d)(3) to the extent that they would otherwise be applicable to the proposed transaction.

Respectfully submitted,

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RailAmerica, Inc., Iron Horse Acquisition
Holding LLC and NEWCO*

Dated: May 22, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Petition By Applicants For Revocation Of Class Exemptions to be served by first class mail, postage pre-paid, this 22nd day of May 2007, on the persons listed in 49 CFR § 1180.4(c)(5) as follows:

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The Governor, Public Service Commission and/or Department of Transportation of the States of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Vermont, Virginia, and Washington

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