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Via E-filing

February 27, 2008

Hon Ann K Quinlan
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re *PCI Transportation, Inc v Fort Worth & Western Railroad Company*
STB Docket No NOR 42094 Sub-No 1

Dear Secretary Quinlan

Enclosed for filing on behalf of the Parties in the above-captioned docket is the **Parties' Joint Status Report And Suggestion On Litigation** presented in both original and PDF version in WORD format for IMac This document reflects the correct date and service date

By agreement, counsel has been served both by E-Mail and U S Mail this date

Please acknowledge receipt

Thank you

Yours truly,

Paul H Lamboley

PHL/nd
Enc

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UNITED STATES OF AMERICA

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. NOR 42094 Sub-No.1

PCI TRANSPORTATION, INC.

Complainant,

v.

FORT WORTH & WESTERN RAILROAD COMPANY

Respondent.

**PARTIES' JOINT STATUS REPORT
AND SUGGESTION ON LITIGATION**

This proceeding over demurrages was commenced by Complainant PCI Transportation, Inc ("PCI") on October 26, 2006. It is the second of two complaints filed by PCI following dismissal of its initial complaint without prejudice on motion of Respondent Fort Worth & Western Railroad Company ("FWWR")

On November 24, 2006, FWWR filed a Motion to Dismiss for the lack of jurisdiction over contract issues under 49 USC 10709, to which PCI filed its Response in opposition on December 21, 2006. On February 26, 2007, FWWR filed its Answer to Complaint and a Counter-claim, to which PCI filed its Answer to the Counter-claim of FWWR on March 29, 2007.

The merits of FWWR's Motion to Dismiss and PCI's Opposition thereto have been at issue since December, 2006. On May 29, 2007, FWWR, contending that all of PCI's claims involving demurrages are contract-based, requested Board decision granting its Motion to Dismiss or alternatively to determine which, if any, of PCI's claims fall within the Board's jurisdiction and should be addressed on the merits by the Parties.

On May 11, 2007, the Board established a Procedural Schedule for determination of PCI's Complaint and FWWR's Answer and Counter-claim.

On July 19, 2007, September 4, 2007, and lastly on October 9, 2007, counsel concluded that a basis for a settlement agreement appeared possible, and jointly requested on behalf of the Parties that the Board suspend the Procedural Schedule set out in its order dated May 11, 2007 in order to allow time for the parties to pursue settlement efforts.

By Orders dated August 6, 2007, September 6, 2007 and October 12, 2007 the Board granted the Parties' request and suspended the procedural schedule until October 25, 2007

On October 31, 2007, the Parties jointly reported that, while several issues had been resolved, a remaining issue may not be resolved in the near future and concluded that *additional time for the parties to pursue and complete settlement efforts should not be extended*

Accordingly, the Parties requested that the Board re-establish the Procedural Schedule as sent out in its order dated May 11, 2007, modified to incorporate appropriate date changes and preserve the original time-lines

To date, there has been neither decision on FWWR's pending Motion to Dismiss, filed in November, 2006, nor establishment of a new procedural schedule as requested in October, 2007

As the Board has been previously informed by the Parties, there is parallel litigation before the United States Court of Appeals for the 5th Circuit, Case No 06-11301, involving FWWR's appeal of the November 6, 2006 decision of the United States District Court for the Northern District of Texas, Fort Worth Division, on remand that dismissed all Parties' claims believing that the Board had exclusive jurisdiction over all issues between the parties, including contract-based claims. The Parties have, on two occasions, requested the Circuit to extend briefing schedules in order to (1) facilitate settlement negotiations, or failing that, (2) allow the Board to decide FWWR's pending Motion to Dismiss based on jurisdictional grounds, or alternatively, to determine the jurisdictional scope of issues to be addressed on the merits in the proceedings before the Board

On November 5, 2007, acting on the parties second request to extend time, the 5th Circuit entered an Order dismissing the appeal without prejudice to the right of either party to reinstate the appeal within ninety (90) days from date of the Order, i.e. February 6, 2008

On February 5, 2008, the FWWR filed an Unopposed Motion to Extend Reinstatement Period to allow the STB to rule before reinstating the appeal

On February 8, 2008, the 5th Circuit granted the motion and extended the date for reinstatement of the appeal for 90 days to May 8, 2008

Based on the present status of litigation and limited settlement prospects, the Parties believe it appropriate to respectfully suggest that going forward the Board should act on FWWR's Motion to Dismiss to decide jurisdictional questions before the Board that will define which issues, if any, are to be addressed on the merits, and then establish a new procedural schedule for any proceeding on Parties' Complaint and Counter-claim

Submitted this 26th day of February, 2008 by

 /s/
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that by agreement a true and correct copy of the foregoing document was served on all Counsel of Record identified herein above by (1) e-mail and (2) first class U S mail, postage prepaid, this 26th day of February, 2008

 /s/
Paul H Lambolcy