

226007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. NOR 42108

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

**RESPONDENT FORE RIVER WAREHOUSING & STORAGE CO., INC.'S
RESPONSE TO PETITIONER'S STATUS REPORT
AND PARTIAL MOTION TO DISMISS**

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

Dated: November 16, 2009

**ENTERED
Office of Proceedings**

NOV 16 2009

**Part of
Public Record**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**THE SPRINGFIELD TERMINAL RAILWAY COMPANY --
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AND PARTIAL MOTION TO DISMISS**

NOW COMES Respondent Fore River Warehousing & Storage Co., Inc. ("Fore River"), and responds to Petitioner Springfield Terminal Railway Company's ("STRC") Status Report dated November 5, 2009, and also moves to partially dismiss STRC's claims for 2006 demurrage. The basis for this motion is that the applicable statute of limitations, 49 U.S.C.A. § 11705, bars STRC's effort to collect all purported demurrage charges accruing more than three years prior to April 29, 2009—the date STRC's complaint was filed with the United States District Court for the District of Maine (the "Court").¹

ARGUMENT

Fore River largely agrees with STRC's characterization of the status of the proceedings before the Court. However, in addition to Fore River's general arguments that it cannot be held liable for demurrage charges in any amount, Fore River specifically challenges some of the purported 2006 demurrage claims on statute of limitations

¹ As indicated on Exhibit A hereto, STRC's complaint is dated April 24, 2009, but was actually filed with the United States District Court for the District of Maine on April 29, 2009, according to the Clerk's office.

grounds—and to that extent, a decision in this proceeding will be moot as to those particular claims.

In its March 25, 2009, order the Court stated that Fore River is not foreclosed from so arguing: “While not foreclosing Defendant from later arguing that Springfield’s collection should be time-barred, the Court refuses to hold that its dismissal of the Prior Litigation without prejudice provides a foundation for dismissing the current Complaint with prejudice. Therefore, Defendant’s Motion to Dismiss is hereby DENIED WITHOUT PREJUDICE to Defendant renewing any arguments in favor of dismissal at a later date assuming those arguments are not mooted by the outcome of the STB proceeding.”²

The Board, in its February 10, 2009, decision properly applied the three-year statute of limitations under 49 U.S.C.A. § 11705 and determined that it would not consider the 2004 claims with respect to STRC’s Petition for Declaratory Order (“Petition”). Similarly, because some of STRC’s 2006 demurrage claims accrued prior to April 29, 2006, the Board should either dismiss those claims as time barred or determine that STRC’s Petition is moot with respect to those claims.

Pursuant to 49 U.S.C.A. § 11705(a), a cause of action to collect transportation or service charges, including demurrage, must be initiated three years from the date of accrual of the cause of action. Furthermore, 49 U.S.C.A. § 11705(g) provides that such a cause of action accrues upon “delivery or tender of delivery” by the carrier. As set forth below, according to STRC’s own records, many of the cars which are purportedly subject to demurrage charges began accruing demurrage after they were constructively—rather

² The present filing addresses only the statute of limitations. Fore River reserves its right to make all arguments to the Court with respect to STRC’s ability to recover the damages it seeks, if the Board rules in favor of STRC in this proceeding.

than actually—placed with Fore River. The constructive placement date is clearly the “tender of delivery” date under section 11705(g), and, therefore, the date of accrual of the three-year statute of limitations. Therefore, pursuant to section 11705, STRC’s claims of demurrage for cars that were actually, or constructively, placed by STRC prior to April 29, 2006 are time barred.

According to STRC’s demurrage bill dated June 8, 2006, (the “Bill”) attached hereto as Exhibit B,³ the first fifty-four cars listed in the Bill were constructively placed prior to April 29, 2006. Applying the method STRC uses to calculate the number of demurrage days (i.e. total debit days less two automatic credit days for each car equals total demurrage days for the month) and excluding the fifty-four cars from the Bill that were tendered prior to April 29, 2006, the total debits should be 747 and the total credits should be 324 for a total of 423 demurrage days. See Deposition of Michael Bostwick, pages 40-48, relevant excerpts attached hereto as Exhibit C. Applying the \$60.00 daily demurrage charge to the 423 demurrage day total, the amount STRC could still theoretically recover on the Bill, should the Board determine Fore River is party that is liable for demurrage, is \$25,380—rather than the total \$31,440 provided in the Bill.

Thus, the Board’s decision in this proceeding will be moot as to the demurrage claims as to the first fifty-four cars listed in Exhibit B, totaling \$6,060 of the \$31,440 total, and Fore River respectfully moves that the Board dismiss those individual claims.

CONCLUSION

Pursuant to 49 U.S.C.A. § 11705, all purported demurrage claims accruing prior to April 29, 2006, three years prior to the date STRC filed its complaint with the Court,

³ The Bill was attached as part of Exhibit E to the complaint that STRC filed in the United States District Court in 2007—which, in turn, is Exhibit A to STRC’s Petition in this proceeding.

are barred. Accordingly, STRC's Petition for Declaratory Order must be dismissed, or determined to be moot, to the extent that the Petition seeks to recover purported demurrage charges accruing before April 29, 2006.

Dated: November 16, 2009

Respectfully Submitted,



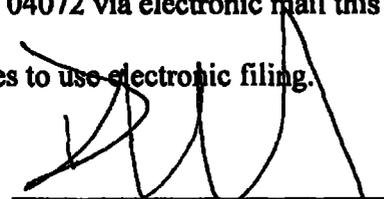
Daniel L. Rosenthal
Adriann E. Fouts
VERRILL DANA, LLP
P.O. Box 586
One Portland Square
Portland, ME 04112-0586
(207) 774-4000

Attorneys for Respondent
Fore River Warehousing &
Storage Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to Keith R. Jacques, Attorney for Springfield Terminal Railway Company, Smith Elliott Smith & Garney, 199 Main Street, PO Box 1179, Saco, ME 04072 via electronic mail this 16th day of November, 2009, per agreement of the parties to use electronic filing.

Dated: November 16, 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.

STANDARD, STAYED

**U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 2:09-cv-00166-GZS**

SPRINGFIELD TERMINAL RAILWAY COMPANY v. FORE
RIVER WAREHOUSING AND STORAGE CO INC
Assigned to: JUDGE GEORGE Z. SINGAL
Referred to: MAGISTRATE JUDGE JOHN H. RICH III
Cause: 28:1331 Fed. Question

Date Filed: 04/29/2009
Jury Demand: None
Nature of Suit: 190 Contract: Other
Jurisdiction: Federal Question

Plaintiff

**SPRINGFIELD TERMINAL RAILWAY
COMPANY**

represented by **KEITH JACQUES
SMITH, ELLIOTT, SMITH & GARMEY,
P.A.
PO BOX 442
PORTLAND , ME 04112
(207)282-1527
Email: kjacques@sesg.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED**

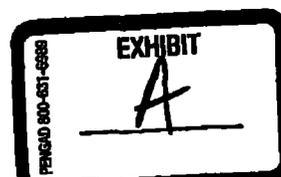
V.

Defendant

**FORE RIVER WAREHOUSING AND
STORAGE CO INC**

represented by **DANIEL L. ROSENTHAL
VERRILL DANA LLP
ONE PORTLAND SQUARE
P.O. BOX 586
PORTLAND , ME 04112
(207) 774-4000
Email: drosenthal@verrilldana.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
04/29/2009	1	<p>COMPLAINT against FORE RIVER WAREHOUSING AND STORAGE CO INC</p> <p>IF FILING FEE IS BEING PAID WITH A CREDIT CARD, COUNSEL ARE INSTRUCTED TO IMMEDIATELY LOGIN TO CM/ECF AND DOCKET <i>Case Opening Filing Fee Paid</i> FOUND IN THE <i>Complaints and Other Initiating Documents</i> CATEGORY.</p> <p>IF FILING FEE IS BEING PAID WITH A CHECK, THE COURT REQUIRES RECEIPT OF</p>



		PAYMENT WITHIN 48 HOURS OF THIS FILING., filed by SPRINGFIELD TERMINAL RAILWAY COMPANY. (Service of Process Deadline 8/27/2009) (Attachments: # 1 Exhibit A Freight Tariff, # 2 Exhibit B Demurrage Calculations, # 3 Exhibit C Invoice)(bfa) (Entered: 04/30/2009)
04/29/2009	<u>2</u>	CIVIL COVER SHEET. (bfa) (Entered: 04/30/2009)
04/29/2009	<u>3</u>	CORPORATE DISCLOSURE STATEMENT by SPRINGFIELD TERMINAL RAILWAY COMPANY. (bfa) (Entered: 04/30/2009)
04/30/2009		Filing Fee Paid via Credit Card (Filing fee \$ 350 receipt number 0100000000000580755.), filed by SPRINGFIELD TERMINAL RAILWAY COMPANY.(JACQUES, KEITH) (Entered: 04/30/2009)
04/30/2009	<u>4</u>	Summons Issued as to FORE RIVER WAREHOUSING AND STORAGE CO INC. Counsel shall print the embossed summons and effect service in the manner in accordance with Fed.R.Civ.P.4. Note-If you are using Version 6 of Adobe Acrobat, be sure the PRINT WHAT field is set to DOCUMENTS AND COMMENTS (Click File, then Print to check this setting). (bfa) (Entered: 04/30/2009)
05/20/2009	<u>5</u>	WAIVER OF SERVICE Returned Executed FORE RIVER WAREHOUSING AND STORAGE CO INC waiver sent on 4/29/2009. (JACQUES, KEITH) Modified on 5/20/2009 to reflect this waiver was sent on 4/29/2009, not 5/18/2009(lrc). (Entered: 05/20/2009)
05/20/2009		NOTICE of Docket Entry Modification regarding <u>5</u> Waiver of Service Executed : This docket entry was modified to reflect that the waiver was sent on 4/29/2009, not 5/18/2009 as previously docketed. (lrc) (Entered: 05/20/2009)
05/20/2009		Set Answer Deadline for FORE RIVER WAREHOUSING AND STORAGE CO INC- Waiver sent on 4/29/2009: Answer due by 6/29/2009.(lrc) (Entered: 05/20/2009)
05/21/2009	<u>6</u>	MOTION to Dismiss by FORE RIVER WAREHOUSING AND STORAGE CO INC Responses due by 6/11/2009. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(ROSENTHAL, DANIEL) (Entered: 05/21/2009)
05/22/2009		set Deadlines : Fore River Warehousing and Storage Co. Inc's Corporate Disclosure Statement due by 5/27/2009.(mjlt) (Entered: 05/22/2009)
05/22/2009	<u>7</u>	CORPORATE DISCLOSURE STATEMENT by FORE RIVER WAREHOUSING AND STORAGE CO INC. (ROSENTHAL, DANIEL) (Entered: 05/22/2009)
06/11/2009	<u>8</u>	RESPONSE in Opposition re <u>6</u> MOTION to Dismiss filed by SPRINGFIELD TERMINAL RAILWAY COMPANY. Reply due by 6/22/2009. (Attachments: # 1 Exhibit STB Decision and Order)(JACQUES, KEITH) (Entered: 06/11/2009)
06/19/2009	<u>9</u>	REPLY to Response to Motion re <u>6</u> MOTION to Dismiss filed by FORE RIVER WAREHOUSING AND STORAGE CO INC. (ROSENTHAL, DANIEL) (Entered: 06/19/2009)
07/27/2009	<u>10</u>	ORDER denying <u>6</u> Motion to Dismiss By JUDGE GEORGE Z. SINGAL. (lrc) (Entered: 07/27/2009)

		07/27/2009)
07/27/2009		Set Deadlines Pursuant to the Order entered on 7/27/2009: Plaintiff's Status Report due by 9/25/2009.(lrc) (Entered: 07/27/2009)
09/25/2009	<u>11</u>	STATUS REPORT by SPRINGFIELD TERMINAL RAILWAY COMPANY. (Attachments: # <u>1</u> Exhibit Surface Transportation Board Docket Sheet, # <u>2</u> Exhibit Surface Transportation Board Decision)(JACQUES, KEITH) (Entered: 09/25/2009)
09/25/2009		Set Deadlines Regarding Status Report filed on 9/25/2009: Per Order #10 entered on 7/27/2009, any supplement to Plaintiff's Status Report shall be filed by 10/13/2009.(nrg) (Entered: 09/25/2009)
10/05/2009	<u>12</u>	NOTICE/CORRESPONDENCE Re: Response to Status Report by FORE RIVER WAREHOUSING AND STORAGE CO INC (ROSENTHAL, DANIEL) (Entered: 10/05/2009)
10/15/2009	<u>13</u>	ORDER to File Additional Status Report. Set Deadlines: Status Report due from Springfield Terminal Railway Company by 12/14/2009. By JUDGE GEORGE Z. SINGAL. (kic) (Entered: 10/15/2009)

PACER Service Center			
Transaction Receipt			
11/16/2009 15:26:04			
PACER Login:	vd0513	Client Code:	89945-1134
Description:	Docket Report	Search Criteria:	2:09-cv-00166-GZS
Billable Pages:	2	Cost:	0.16



SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK
NO. BILLERICA, MASS. 01802

June 8 2006
Date

Name FORE RIVER DIST. CENTER
Customer
Address 217 BEND STREET
PORTLAND, MAINE 04103

Dear _____:

Enclosed please find a copy of demurrage calculation sheets for the month of MAY 2006. Based upon this information your company's demurrage charges for that period total \$3,440.00

Please review this information and contact the undersigned immediately, if you believe that any discrepancy exists. If we have not heard from you within ten (10) days from the date hereof, we will assume that you are in agreement with the enclosed calculations, and an actual bill for same will be issued.

Your anticipated cooperation will be greatly appreciated.

SPRINGFIELD TERMINAL RAILWAY
COMPANY

BY SHELDON MERRILL

20 REGGY ROAD WEST

Address SOUTH PORTLAND,

MAINE 04106

Tel # (207) 828-6403

Enclosure

CODE NUMBER DATE TYPE OF CHARGE FOR UNLOADING LOCATION
FRD01 007624 6/06/06 AVERAGE AGREEMENT PORTLAND ME

CUSTOMER NAME AND ADDRESS:

FORE RIVER DIST CENTER
217 READ ST

PORTLAND ME
04103

DESCRIPTION OF CHARGES OR SERVICES

956 TOTAL DEBITS
- 432 TOTAL CREDITS
= 524 DAYS # CARS 216

RATE

60.00
DUE DATE
7/06/06

CHARGES

31,440.00
AMOUNT DUE
31,440.00

PLEASE DIRECT ANY QUESTIONS TO:
MANAGER, CUSTOMER ACCOUNTING
IRON HORSE PARK
NORTH BILLERICA MA 01862
(508) 663-1062

TO RECEIVE PROPER CREDIT MAIL
THIS COPY WITH YOUR CHECK TO:
SPRINGFIELD TERMINAL RAILWAY

REMITTANCES OF LESS THAN BILLED AMOUNT SHOULD BE SUPPORTED
WITH SPECIFIC ADVICE FOR THE DISCREPANT PAYMENT.

DUE DATE
7/06/06

AMOUNT DUE
31,440.00

CODE NUMBER DATE TYPE OF CHARGE FOR UNLOADING LOCATION
 PRD01 007624 6/06/06 AVERAGE AGREEMENT PORTLAND ME

CUSTOMER NAME AND ADDRESS:

FORE RIVER DIST CENTER
 217 READ ST

PORTLAND ME
 04103

TAR INIT NUMBER CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS			
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IEC 020022	4/26/06				4/20/06	745	5				6
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RLE 006264	4/26/06				4/20/06	745	5				6
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RLE 006295	4/26/06				4/20/06	745	5				6
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BOX 502124	4/26/06				4/20/06	745	5				6
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KR 020271	4/28/06				4/21/06	855	7				3
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MRC 024049	4/28/06				4/24/06	805	4				3
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BOX 502103	4/28/06				4/24/06	805	4				3
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RE 006202					4/26/06	735	3				3
	5/02/06	1230	5/02/06	1800							

CODE NUMBER DATE TYPE OF CHARGE FOR UNLOADING LOCATION
 FRD01 007624 6/06/06 AVERAGE AGREEMENT PORTLAND

ME

CUSTOMER NAME AND ADDRESS:

FORE RIVER DIST CENTER
 217 READ ST

PORTLAND ME
 04103

CAR INIT NUMBER CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS			
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FBOX 502694	5/02/06	1230	5/02/06	1800	4/26/06	735	3				3
GMRC 023002	5/02/06	1230	5/02/06	1800	4/26/06	735	3				3
FBOX 504263	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
FBOX 502316	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
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IF 000462	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
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KR 020000	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
EC 020077	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
LR 000155	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
BOX 502485	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
BOX 502491	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
KR 020002	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
LE 006246	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
LR 000138	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
IOX 502587	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4
OX 502581	5/04/06	1530	5/04/06	1900	4/26/06	735	4				4

CODE NUMBER DATE TYPE OF CHARGE FOR UNLOADING LOCATION
 FRD01 007624 5/06/06 AVERAGE AGREEMENT PORTLAND

ME

CUSTOMER NAME AND ADDRESS:

FORE RIVER DIST CENTER
 217 READ ST

PORTLAND ME
 04103

CAR INIT NUMBER	CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS			
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FBOX 502471		5/05/06	1530	5/05/06	1900	4/26/06	735	5				4
FBOX 502336		5/05/06	1530	5/05/06	1900	4/26/06	735	5				4
JMRC 100058		5/05/06	1530	5/05/06	1900	4/26/06	735	5				4
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P 033995		5/05/06	1530	5/05/06	1900	4/26/06	735	5				4
KR 020028		5/05/06	1530	5/05/06	1900	4/26/06	735	5				4
MRC 021088		4/27/06 5/09/06	1500	5/09/06	1900	4/26/06	735	1				12
MRC 024128		4/27/06 5/09/06	1500	5/09/06	1900	4/26/06	735	1				12
BOX 502454		4/27/06 5/09/06	1500	5/09/06	1900	4/26/06	735	1				12
BOX 502116		4/27/06 5/09/06	1500	5/09/06	1900	4/26/06	735	1				12
UR 020231		4/27/06 5/09/06	1500	5/09/06	1900	4/26/06	735	1				12
UR 020249		4/27/06 5/09/06	1500	5/09/06	1900	4/26/06	735	1				12
OX 502413		5/04/06	1530	5/04/06	1900	4/28/06	740	2				4
R 020025		5/02/06	1230	5/02/06	1800	5/01/06	840	1				
RC 078213		5/05/06	1530	5/05/06	1900	5/01/06	840	3				1
A 405718		5/05/06	1530	5/05/06	1900	5/01/06	840	3				1

FAIRWAY BILL	BILL				
CODE NUMBER	DATE	TYPE OF CHARGE FOR UNLOADING	LOCATION		
FRD01 007624	6/06/06	AVERAGE AGREEMENT	PORTLAND		ME

CUSTOMER NAME AND ADDRESS:

FORE RIVER DIST CENTER
217 READ ST

PORTLAND ME
04103

CAR INIT NUMBER CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS			ALLOW
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OK 375646	5/08/06	1515	5/08/06	1900	5/01/06	840	4				3
MRC 077234	5/08/06	1515	5/08/06	1900	5/01/06	840	4				3
RLE 006262	5/08/06	1515	5/08/06	1900	5/01/06	840	4				3
LGG 086149	5/08/06	1515	5/08/06	1900	5/03/06	740	2				3
EC 031911	5/05/06	1530	5/05/06	1900	5/04/06	822	1				
077201	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
MRC 024104	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
CR 020143	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
CR 020253	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
IOX 504155	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
IOX 502265	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
R 020036	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
RC 078241	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
OX 502385	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
R 020150	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
OX 502166	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
OX 502738	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2

.CODE NUMBER DATE TYPE OF CHARGE FOR UNLOADING LOCATION
 FRD01 007624 6/06/06 AVERAGE AGREEMENT PORTLAND

ME

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217 READ ST

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04103

CAR INIT NUMBER CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS			ALLOW
	DATE	TIME	DATE	TIME	DATE	TIME		CR	L1	L2	
FBOX 502695	5/08/06	1515	5/08/06	1900	5/04/06	822	2				2
FBOX 502164	5/10/06	1325	5/10/06	1900	5/04/06	822	4				2
FBOX 502335	5/10/06	1325	5/10/06	1900	5/04/06	822	4				2
FBOX 502004	5/10/06	1325	5/10/06	1900	5/04/06	822	4				2
FBOX 502753	5/10/06	1325	5/10/06	1900	5/04/06	822	4				2
FBOX 502372	5/10/06	1325	5/10/06	1900	5/04/06	822	4				2
FBOX 502036	5/10/06	1325	5/10/06	1900	5/04/06	822	4				2
F 502488	5/10/06	1325	5/10/06	1900	5/04/06	822	4				2
GMRC 024123	5/11/06	1300	5/11/06	1311	5/04/06	822	5				2
DIVERTED TO MCV NS											
FBOX 502128	5/11/06	1650	5/12/06	1200	5/04/06	822	6				2
CR 020189	5/11/06	1650	5/12/06	1200	5/04/06	822	6				2
BOX 502367	5/11/06	1650	5/12/06	1200	5/04/06	822	6				2
BOX 502126	5/12/06		5/17/06	1200	5/04/06	822	7				6
MRC 024113	5/16/06	1630	5/17/06	1200	5/04/06	822	7				6
MRC 100119	5/16/06	1630	5/17/06	1200	5/04/06	822	7				6
BOX 502381	5/23/06	2030	5/25/06	1000	5/04/06	822	15				6
BOX 502146	5/09/06	1500	5/09/06	1900	5/05/06	805	2				2
IRC 022029	5/10/06	1325	5/10/06	1900	5/05/06	805	3				2
RC 050054	5/10/06	1325	5/10/06	1900	5/05/06	805	3				2

FROM BILL BILL
 CODE NUMBER DATE TYPE OF CHARGE FOR UNLOADING LOCATION
 PRD01 007624 6/06/06 AVERAGE AGREEMENT PORTLAND

ME

CUSTOMER NAME AND ADDRESS:

FORE RIVER DIST CENTER
217 READ ST

PORTLAND ME
04103

CAR INIT NUMBER CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS			
	DATE	TIME	DATE	TIME	DATE	TIME		CR	L1	L2	ALLOW
GMRC 024065	5/10/06	1325	5/10/06	1900	5/05/06	805	3				2
MEC 031973	5/10/06	1325	5/10/06	1900	5/05/06	805	3				2
GMRC 024089	5/10/06	1325	5/10/06	1900	5/05/06	805	3				2
SLGG 010070	5/10/06	1325	5/10/06	1900	5/05/06	805	3				2
GMRC 021023	5/10/06	1325	5/10/06	1900	5/05/06	805	3				2
RBOX 031343	5/10/06	1325	5/10/06	1900	5/05/06	805	3				2
GMRC 076075	5/10/06	1325	5/10/06	1900	5/05/06	805	3				2
006225	5/10/06	1325	5/10/06	1900	5/05/06	805	3				2
GMRC 025043	5/11/06	1650	5/12/06	1200	5/05/06	805	5				2
GMRC 100014	5/11/06	1650	5/12/06	1200	5/05/06	805	5				2
GMRC 078561	5/11/06	1650	5/12/06	1200	5/05/06	805	5				2
GMRC 024191	5/12/06 5/16/06	1630	5/17/06	1200	5/08/06	825	5				4
BOX 502085	5/11/06	1650	5/12/06	1200	5/09/06	745	3				
BOX 502477	5/11/06	1650	5/12/06	1200	5/09/06	745	3				
BOX 502472	5/11/06	1650	5/12/06	1200	5/09/06	745	3				
BOX 502169	5/11/06	1650	5/12/06	1200	5/09/06	745	3				
GMRC 021082	5/11/06	1650	5/12/06	1200	5/09/06	745	3				
CR 020190	5/11/06	1650	5/12/06	1200	5/09/06	745	3				
BOX 502643	5/11/06	1650	5/12/06	1200	5/09/06	745	3				

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 PRD01 007624 6/06/06 AVERAGE AGREEMENT PORTLAND

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CAR INIT NUMBER	CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS				
		-----PL-----	*-----RL-----*	*-----BR-----*	DATE	TIME	DATE		TIME	CR	L1	L2	ALLOW
YKR 020084		5/11/06	1650	5/12/06	1200	5/09/06	745	3					
GMRC 023024		5/11/06	1650	5/12/06	1200	5/09/06	745	3					
YKR 020029		5/11/06	1650	5/12/06	1200	5/09/06	745	3					
FBOX 502459		5/11/06	1650	5/12/06	1200	5/09/06	745	3					
'BOX 502100		5/12/06		5/17/06	1200	5/09/06	745	4					4
'BOX 502743		5/12/06		5/17/06	1200	5/09/06	745	4					4
'BOX 502143		5/12/06		5/17/06	1200	5/09/06	745	4					4
' 502142		5/11/06	1650	5/12/06	1200	5/10/06	735	2					
RLE 006283		5/15/06	2300	5/16/06	1000	5/11/06	825	2					3
JU 527449		5/12/06		5/17/06	1200	5/11/06	825	2					4
BOX 038186		5/12/06		5/17/06	1200	5/11/06	825	2					4
IC 001245		5/12/06		5/17/06	1200	5/11/06	825	2					4
IR 020272		5/12/06		5/17/06	1200	5/11/06	825	2					4
C 032125		5/12/06		5/17/06	1200	5/11/06	825	2					4
OX 502633		5/12/06		5/17/06	1200	5/11/06	825	2					4
RC 021008		5/12/06		5/17/06	1200	5/11/06	825	2					4
JX 502460		5/12/06		5/17/06	1200	5/11/06	825	2					4
JX 502507		5/12/06		5/17/06	1200	5/11/06	825	2					4
JX 502712		5/12/06		5/17/06	1200	5/11/06	825	2					4

BILL NUMBER DATE TYPE OF CHARGE FOR UNLOADING LOCATION
 FRD01 007624 6/06/06 AVERAGE AGREEMENT PORTLAND

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CUSTOMER NAME AND ADDRESS:

FORE RIVER DIST CENTER
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04103

CAR INIT NUMBER	CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB.	EXCESS			
		DATE	TIME	DATE	TIME	DATE	TIME		CR	L1	L2	ALLOW
SOU 523167		5/12/06				5/11/06	825	2				4
		5/16/06	1630	5/17/06	1200							
GMRC 024131		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
RBOX 039554		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
FBOX 502589		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
YKR 020043		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
CRLE 006208		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
GMRC 007157		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
I 036056		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
CSXT 138188		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
GMRC 025026		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
GMRC 077145		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
CSXT 128430		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
FBOX 502778		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
FBOX 502498		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
KR 020048		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
KR 020014		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
LR 000137		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
BOX 502283		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							
BOX 502008		5/17/06				5/11/06	825	4				4
		5/18/06	1800	5/19/06	1200							

CODE NUMBER DATE TYPE OF CHARGE FOR UNLOADING LOCATION
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CUSTOMER NAME AND ADDRESS:

FORE RIVER DIST CENTER
 217 READ ST

PORTLAND ME
 04103

CAR INIT NUMBER	CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS					
		-----PL-----	DATE	TIME	*-----RL-----*	DATE	TIME		*-----BR-----*	DATE	TIME	CR	L1	L2
YKR 020000			5/19/06	1930	5/22/06	1100	5/11/06	825	7					4
FBOX 502491			5/20/06	1720	5/22/06	1700	5/11/06	825	7					4
YKR 020002			5/20/06	1720	5/22/06	1700	5/11/06	825	7					4
FBOX 502587			5/20/06	1720	5/22/06	1700	5/11/06	825	7					4
FBOX 502581			5/20/06	1720	5/22/06	1700	5/11/06	825	7					4
FBOX 502413			5/20/06	1720	5/22/06	1700	5/11/06	825	7					4
GMRC 076038			5/20/06	1720	5/22/06	1700	5/11/06	825	7					4
YX 502387			5/25/06	2000	5/26/06	1430	5/11/06	825	11					4
FBOX 502243			5/25/06	2000	5/26/06	1430	5/11/06	825	11					4
FBOX 502214			5/25/06	2000	5/26/06	1430	5/11/06	825	11					4
SXT 126331			5/25/06	2000	5/26/06	1430	5/11/06	825	11					4
BOX 041192			5/25/06	2000	5/26/06	1430	5/11/06	825	11					4
BOX 039122			5/25/06	2000	5/26/06	1430	5/11/06	825	11					4
BLE 006311			5/15/06	2300	5/16/06	1000	5/15/06	815	1					
BLE 006323			5/19/06	1930	5/22/06	1100	5/15/06	815	6					1
IRC 077207			5/19/06	1930	5/22/06	1100	5/15/06	815	6					1
OX 502386			5/19/06	1930	5/22/06	1100	5/15/06	815	6					1
OX 502047			5/19/06	1930	5/22/06	1100	5/15/06	815	6					1
JX 502537			5/19/06	1930	5/22/06	1100	5/15/06	815	6					1

CODE NUMBER DATE TYPE OF CHARGE FOR UNLOADING LOCATION
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CAR INIT NUMBER	CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS					
		-----PL-----	DATE	TIME	*-----RL-----*	DATE	TIME		*-----BR-----*	DATE	TIME	CR	L1	L2
CRLE 006238			5/19/06	1930	5/22/06	1100	5/15/06	815	6					1
YKR 020169			5/19/06	1930	5/22/06	1100	5/15/06	815	6					1
CRLE 006257			5/19/06	1930	5/22/06	1100	5/15/06	815	6					1
GMRC 078198			5/25/06	2000	5/26/06	1430	5/15/06	815	10					1
FBOX 502273			5/25/06	2000	5/26/06	1430	5/15/06	815	10					1
MEC 031834			5/25/06	2000	5/26/06	1430	5/17/06	820	8					1
MEC 032059			5/25/06	2000	5/26/06	1430	5/17/06	820	8					1
C 024181			5/22/06	1355	5/23/06	1100	5/21/06	855	2					
CRLE 006312			5/22/06	1355	5/23/06	1100	5/21/06	855	2					
GMRC 023085			5/22/06	1355	5/23/06	1100	5/21/06	855	2					
FBOX 502742			5/22/06	1355	5/23/06	1100	5/21/06	855	2					
FBOX 502171			5/22/06	1355	5/23/06	1100	5/21/06	855	2					
CSXT 137733			5/23/06	2030	5/25/06	1000	5/21/06	855	4					
FBOX 502241			5/23/06	2030	5/25/06	1000	5/21/06	855	4					
RBOX 036751			5/23/06	2030	5/25/06	1000	5/21/06	855	4					
RBOX 030285			5/23/06	2030	5/25/06	1000	5/21/06	855	4					
FBOX 502748			5/23/06	2030	5/25/06	1000	5/21/06	855	4					
RBOX 036196			5/23/06	2030	5/25/06	1000	5/21/06	855	4					
YKR 020253			5/23/06	2030	5/25/06	1010	5/21/06	855	4					

PATRON BILL BILL
 CODE NUMBER DATE TYPE OF CHARGE FOR UNLOADING LOCATION
 RD01 007624 6/06/06 AVERAGE AGREEMENT PORTLAND

ME

CUSTOMER NAME AND ADDRESS:

FORE RIVER DIST CENTER
 217 READ ST

PORTLAND ME
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AR KIT NUMBER	CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS		
		DATE	TIME	DATE	TIME	DATE	TIME		CR	L1	L2
RLE 006292		5/24/06	1700	5/25/06	1123	5/21/06	855	4			
KR 020161		5/24/06	1700	5/25/06	1500	5/21/06	855	4			
EC 020064		5/24/06	1700	5/25/06	1500	5/21/06	855	4			
BOX 041055		5/24/06	1700	5/25/06	1500	5/21/06	855	4			
VRC 006221		5/24/06	1700	5/25/06	1500	5/21/06	855	4			
RLE 006253		5/24/06	1700	5/25/06	1500	5/21/06	855	4			
RLE 006285		5/24/06	1700	5/25/06	1500	5/21/06	855	4			
006217		5/26/06	2050	5/27/06	1100	5/21/06	855	6			
VRC 021009		5/26/06	2050	5/27/06	1100	5/21/06	855	6			
BOX 502655		5/26/06	2050	5/27/06	1100	5/21/06	855	6			
BOX 502317		5/26/06	2050	5/27/06	1100	5/21/06	855	6			
GG 086149		5/26/06	2050	5/27/06	1100	5/21/06	855	6			
BOX 502182		5/26/06	2050	5/27/06	1100	5/21/06	855	6			
LE 006262		5/26/06	2050	5/27/06	1100	5/21/06	855	6			
LE 006302		5/29/06	300	5/31/06	1200	5/21/06	855	9			
OX 502231		5/29/06	300	5/31/06	1200	5/21/06	855	9			
R 020040		5/29/06	300	5/31/06	1200	5/21/06	855	9			
W 008043		5/29/06	300	5/31/06	1200	5/21/06	855	9			
LE 006259		5/29/06	300	5/31/06	1200	5/21/06	855	9			

FAIRWAY CODE FRD01	BILL NUMBER 007624	BILL DATE 6/06/06	TYPE OF CHARGE FOR UNLOADING AVERAGE AGREEMENT	LOCATION PORTLAND	ME
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CUSTOMER NAME AND ADDRESS:

FORE RIVER DIST CENTER
217 READ ST

PORTLAND ME
04103

CAR INIT NUMBER CONTENTS	*-----OR-----*		*-----NO-----*		*-----CP-----*		DB	EXCESS				
	DATE	TIME	DATE	TIME	DATE	TIME		CR	L1	L2	ALLOW	
4EC 020142	5/29/06	300	5/31/06	1200	5/21/06	855	9					
UBOX 001045	5/29/06	300	5/31/06	1200	5/21/06	855	9					
UMRC 023097	5/29/06	300	5/31/06	1200	5/21/06	855	9					
UMRC 078382	5/29/06	300	5/31/06	1200	5/21/06	855	9					
BOX 040402	5/29/06	300	5/31/06	1200	5/21/06	855	9					
MRC 078287	5/29/06	300	5/31/06	1200	5/21/06	855	9					
BOX 502595	5/25/06	1100	5/25/06	1105	5/22/06	920	3					
DIVERTED TO SLR												
TOTALS:							956	432			571	

Linda Breen

#10

From: Phil Kingman [pkingman@guilfordrail.com]
Sent: Monday, October 20, 2003 8:14 AM
To: 'lbreen@guilfordrail.com'
Subject: FW: Springfield Terminal Railroad Demurrage - July 03

Bill
to Breen
(LB)

Phil,

I'm going to rewind the clock to a meeting we had back on April 30th of 2002 the subject being how many railcars Fore River could accommodate in one day. We discussed that we could take 10 to 12 railcars daily. You said that the ST would release/notify us of no more than 12 railcars in one day.

Now to the present, I have just received a demurrage bill for the month of July for a total of \$6550.00. If you look at your records you released 44 railcars to us on Monday July 7th, as far as I'm concerned that is bunching railcars from the weekend. You did the same thing to us on Monday July 14th when you released 22 railcars to us, another case of bunching. Those two bunching days impacted our ability to off load those railcars in a timely manner resulting in your demurrage charges. With that said, we will not be paying this demurrage bill.

When you get the opportunity, please email me stating that this bill has been credited.

Thanks,

Mike

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42108

THE SPRINGFIELD TERMINAL RAILWAY COMPANY
PETITION FOR DECLARATORY ORDER

DEPOSITION OF MICHAEL BOSTWICK, taken
pursuant to notice dated August 18, 2009, at the law
offices of Verrill Dana, One Portland Square, Portland,
Maine, on September 1, 2009, commencing at 9:57 A.M.,
before Lisa S. Bishop, RPR, RMR, a Notary Public in and for
the State of Maine.

APPEARANCES: DANIEL L. ROSENTHAL, ESQ.
ADRIANNE FOUTS, ESQ.
KEITH R. JACQUES, ESQ.

ALSO PRESENT: Michael Cella

Duvernay Reporting, Inc.
2 Merrill Road
Westbrook, ME 04092
207-854-2721

I N D E X

Deponent: MICHAEL BOSTWICK



1 railroads, so anyone that does business with railroads
 2 would know that demurrage happens, it occurs, and how it is
 3 calculated.
 4 Q Do you know -- did Fore River ever agree to that, in
 5 other words, regardless of historical practice or what you
 6 do with anybody else, did Fore River ever say, okay, we
 7 agree to be charged demurrage?
 8 A It's not a matter of agreeing. It's the tariff.
 9 Q And I'm asking you again here, this uses the term
 10 average agreement, so I'm focusing on the word agreement
 11 and I'm asking you is that referencing anything that Fore
 12 River ever did or said to say we agree?
 13 A Shipping on a bill of lading, a party to the bill of
 14 lading, you agree.
 15 Q Just so I understand, I'm not trying to argue with
 16 you, your understanding is that Fore River, to the extent
 17 that it agreed to pay for demurrage, that agreement would
 18 come from the relationship that Fore River has with IP,
 19 correct?
 20 A Right.
 21 Q And that would be reflected --
 22 A Or that and -- historically -- I couldn't tell
 23 historically if Fore River has ever agreed or not agreed
 24 per your question. It is historical that railroads charge
 25 demurrage and consignees pay demurrage.

1 Q Okay. And that assumes that a party actually is a
 2 consignee, correct?
 3 A Correct.
 4 Q So if you are not a consignee, you are not paying
 5 demurrage, is that fair to say?
 6 A If you're a destination, where the product needs to go
 7 to, you are the consignee.
 8 Q And what's your basis for that definition of the word
 9 consignee?
 10 A Consignee is the receiver of the product.
 11 Q And is that based on your understanding of the law?
 12 A It's my experience as a railroad person that the
 13 consignee is the person that is the receiver of the
 14 product.
 15 Q Okay. And is that as defined in the bill of lading?
 16 A Yeah, it's on the bill of lading, the consignee says
 17 Fore River Warehouse, 217 whatever the street is there.
 18 Q Well, we will look at that in a minute. Just to get
 19 back to the average agreement term, there isn't a piece of
 20 paper somewhere that says average agreement between Fore
 21 River and Springfield Terminal that this is referring to,
 22 correct?
 23 A I don't believe so, no.
 24 Q Okay. If you go down a little bit further on the
 25 page, there's a heading that says description of charges or

1 services. Do you see that?
 2 A Yes.
 3 Q And it lists 956 total debits minus 432 total credits
 4 equals 524 days. Now are the debits and the credits there
 5 what we have been talking about earlier today?
 6 A Yes.
 7 Q So it's a mathematical exercise that gets you to 524
 8 days, the word day means a day that demurrage can be
 9 charged?
 10 A A debit day.
 11 Q A debit day?
 12 A Total debit. Those are the days -- that number times
 13 the demurrage charge gets you to your 31,000.
 14 Q So the rate is \$60 per day?
 15 A Yep.
 16 Q The number of cars, 216 So it's not that there are
 17 524 cars necessarily at one day each, it is just some
 18 combination of 216 cars and the number of days that those
 19 cars were accruing demurrage, and that's how we get to the
 20 524?
 21 A Yes.
 22 Q If you would turn to page four. The pages aren't
 23 numbered, but it's the next page. What I want to do is I
 24 just want to have you take me column by column through this
 25 bill. I'm not sure I completely understand what these

1 letters mean. So if we start on the left-hand column, car
 2 INIT, what does that mean?
 3 A Car initial.
 4 Q And that is an identifying -- the next column over is
 5 number, right?
 6 A Yes.
 7 Q So I take it that the first one, GMRC, number 025016,
 8 that's describing one specific car in the world and there
 9 isn't another one identified the same way; is that right?
 10 A Correct.
 11 Q So we could research and follow that car by those
 12 identifying pieces of information?
 13 A Correct.
 14 Q All right. The contents is blank. Now the next
 15 column over, I would like to just have you explain to me
 16 what we are looking at here. And I can be more specific
 17 about it, but you may know it off the top of your head, so
 18 it may be less painful that way.
 19 A OR stands for order, which is the top number.
 20 4/28/06, that's when the car was ordered by Fore River.
 21 5/01/06 is -- and the time is when it was placed. The day
 22 it was released, it was released three hours and 20 minutes
 23 later.
 24 Q Now we are on the next column over under NO and RL?
 25 A Yep.

- 1 Q So RL is released?
 2 A Released.
 3 Q Meaning that Fore River said --
 4 A You spotted these cars three-and-a-half hours ago at
 5 15:40 and they were released three hours and 20 minutes
 6 later. That was a good day. 18 cars that day.
 7 Q You have used the word spotted a number of times.
 8 A Placed.
 9 Q Placed?
 10 A Placed.
 11 Q Okay. What's the NO mean in that column?
 12 A Notified. That would have been -- it's another term
 13 for when that communication happened between us and Fore
 14 River as to when those cars were available, when they
 15 arrived, so 18 cars arrived. Probably no notifications
 16 because I don't think that was a -- that was a -- that was
 17 a record that was kept. It was the placement, the
 18 constructive placement that was basically used as the
 19 notification. Because notification could happen before
 20 constructive placement. It just was never put into the
 21 record.
 22 Q And so what's the constructive placement?
 23 A That's when we physically say, okay, the car has
 24 arrived and we have done the paperwork to put it into the
 25 system. So the car could have arrived on -- you know, the

- 1 between the date it was constructively placed and the date
 2 that Fore River said -- ordered it, said okay, we are ready
 3 for it?
 4 A Right.
 5 Q Now if we don't know from this when Fore River was
 6 notified, then how do we -- how do you base the calculation
 7 of demurrage and constructive placement?
 8 A Because that's -- that's when the clock starts
 9 ticking, when it is CP, constructive placement or
 10 placement.
 11 Q And does constructive placement require some kind of
 12 notice to Fore River?
 13 A That's when -- lots of time, that's when the
 14 communication actually happens.
 15 Q At the time of constructive placement?
 16 A Right.
 17 Q So we've got a car there constructively placed at 7:35
 18 in the morning. Is there a record somewhere that would
 19 show us that Fore River was notified at 7:35 that morning
 20 that the car was ready?
 21 A There would be some type of record. I'm not sure
 22 exactly if it's a fax notification or what the process is.
 23 Q Now keep moving over under the columns. There's a
 24 heading called excess. Do you know what that stands for,
 25 excess?

- 1 car could have arrived on the 18th and notification didn't
 2 happen until the 19th, you know, constructive placement
 3 didn't happen until the 19th. Like this one, 7:35 in the
 4 morning, my guess is the clerk got in and he did the
 5 paperwork. The cars came in the night before and that's
 6 when the car got constructively placed.
 7 Q Okay. So we are now in the column that says CP?
 8 A Yep.
 9 Q CP means constructive placement?
 10 A Yep.
 11 Q And what does BR mean?
 12 A Beats me.
 13 Q And so we then go over to time. That's the time it
 14 was constructively placed, right?
 15 A Yep.
 16 Q Now under DB, does that stand for debit?
 17 A Debit, yes.
 18 Q It says eight?
 19 A Yep.
 20 Q Does that mean eight days of debit on that car?
 21 A Yes.
 22 Q All right. How do we get there?
 23 A That would be the -- that would be the differential
 24 between 4/19 and 4/28.
 25 Q Eight days. And that's based on the difference

- 1 A No.
 2 Q CR, I assume is credit?
 3 A Yeah, I think they used a total base calculation based
 4 on the amount of cars that were released on that month.
 5 Q Now you told me that each car gets two days of
 6 credit --
 7 A Yep.
 8 Q -- automatically?
 9 A Yep.
 10 Q So I would have expected based on that to see the
 11 number two under the term credit.
 12 A I couldn't explain to you the format of the bill. If
 13 you look at the last page of the bill, it sums up 432 at
 14 the bottom. If you counted the cars, total on the bill,
 15 you would -- I think it was a total of 216 cars would be on
 16 this bill, so that's the summation of the 432 at the
 17 bottom.
 18 Q Okay. So it's not listed per car, but you are saying
 19 it is totaled?
 20 A Yep.
 21 Q And listed down at the bottom?
 22 A Yep.
 23 Q All right. If we go over -- do you know what L1
 24 stands for?
 25 A No.

1 Q Or L2?
 2 A No.
 3 Q Allow?
 4 A Allowance is the differential between when the car was
 5 ordered and when it was placed, so there was an allowance
 6 provided on the 28th, 29th, 30th days in April, right?
 7 Q Uh-huh.
 8 A And May 1, so there was four allowance days.
 9 Q Okay. So it now becomes a matter of going down to the
 10 bottom of the bill, and if I understand this correctly, we
 11 would then -- if you turn to the second to last page of the
 12 document, last page of the bill, you would then take all
 13 the debits, subtract out the credits, and then subtract out
 14 the allowances, wouldn't you?
 15 A I'm not sure if that's the exact calculation because
 16 there's -- there's another piece to the puzzle here that I
 17 would rather have -- the person that does all the billing
 18 could more thoroughly explain the tariff itself. Because
 19 the allowance is not a summed up number. The allowance is
 20 based on the individual car. So for the GMRC, you had
 21 eight debits, which was the differential between the 19 and
 22 the 18, the 19th and the 28th, so those are debit days.
 23 The allowance was the differential between the 28th and the
 24 1st. So on that specific car, there was eight debit days
 25 that were accrued. The allowance is showing that we didn't

1 River Warehouse.
 2 Q And it actually is more than that, if you flip through
 3 it.
 4 MR. JACQUES: Thanks.
 5 A Yeah, demurrage bill for July of '06, demurrage bill
 6 for August of '06. Is that what you want?
 7 Q Yeah. And what I want to represent to you is that
 8 Exhibits 4 and 5 together are -- it's my understanding are
 9 all of the demurrage charges that are at issue in this
 10 case. They are --
 11 MR. ROSENTHAL: Let's go off the record for a
 12 minute.
 13 (Discussion off the record.)
 14 Q Back on. So we have just confirmed off the record
 15 that Exhibit -- Exhibits 4 and 5 are copies of the bills
 16 for demurrage that were sent in this case and they
 17 represent the charges that Springfield Terminal is trying
 18 to recover in this case; is that right?
 19 MR. JACQUES: Correct.
 20 A Yes.
 21 Q Obviously I see that these bills were sent to Fore
 22 River, correct?
 23 A Yes.
 24 Q Were they -- were invoices in these amounts ever sent
 25 to IP?

1 hit you with what potentially could have been 13 days
 2 basically of debit days, we allowed for whatever reason
 3 there could have been.
 4 Q I see.
 5 A A nonswitch, so it's not as though you can just say,
 6 okay, you had this many -- this many allowances and offset
 7 it. That's not how it works. It is car specific for the
 8 allowance.
 9 Q So the allowance is not a number -- if I understand
 10 what you're saying correctly, you're saying that the
 11 allowance isn't subtracted out from the debit, it is never
 12 included in the debit in the first place?
 13 A Yeah. Again, I would rather have one of my -- the guy
 14 that does the bill can speak specifically to the whole
 15 calculation process.
 16 Q Okay. Do these bills for -- and just to be specific
 17 about it, I'm going to put stickers on them.
 18 MR. ROSENTHAL: We can go off the record for a
 19 minute.
 20 (Discussion off the record.)
 21 (Exhibit No. 5, Invoice, Attachments, marked for
 22 identification.)
 23 Q I'm going to hand you Exhibit 5 and just ask you to
 24 take a look at that.
 25 A Exhibit 5 is a demurrage bill for June of '06 to Fore

1 A My opinion would be no.
 2 Q Did Springfield Terminal make any effort to recover
 3 the demurrage charges from IP?
 4 A No.
 5 Q They were only sent to Fore River?
 6 A Yes.
 7 Q You talked earlier about how you don't want cars --
 8 Springfield Terminal doesn't want cars sitting any longer
 9 than they need to because Springfield Terminal is paying on
 10 those cars while they sit, correct?
 11 A Yes.
 12 Q Is that because Springfield Terminal doesn't own the
 13 cars?
 14 A Even if I own it, it could be a lost opportunity cost.
 15 There's a cost for every car that we haul, there's a
 16 charge, it's called a per diem charge.
 17 Q And you mentioned earlier that the mill -- IP might
 18 own its own cars?
 19 A Might lease their own cars.
 20 Q So in those two scenarios where they own the cars or
 21 they lease the cars, the cost of those cars sitting is
 22 really on IP, isn't it?
 23 A Not -- no, no, because railroading -- the guy who owns
 24 the mark, that's who I'm paying.
 25 Q What's the mark?