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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35438 228619

EIGHTEEN THIRTY GROUP, LLC – ACQUISITION EXEMPTION – LINE OF RAILROAD IN ALLEGANY COUNTY, MD

VERIFIED NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35437 228620

GEORGES CREEK RAILWAY, LLC – OPERATION EXEMPTION – LINE OF RAILROAD IN ALLEGANY COUNTY, MD

VERIFIED NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35436 228621

DUNCAN SMITH AND GERALD ALTIZER
CONTINUANCE-IN-CONTROL
EIGHTEEN THIRTY GROUP, LLC
AND GEORGES CREEK RAILWAY, LLC

VERIFIED NOTICE OF EXEMPTION

RIFFIN'S RESPONSE TO COMMENTS OF ALLEGANY COUNTY, MARYLAND

1. Now comes James Riffin ("**Riffin**"), protestant in the above proceedings, who herewith files Riffin's Response to Comments of Allegany County, Maryland.

2. In the event this Response is construed to be a reply to a reply, Riffin would ask that it be accepted by the STB in order to provide the STB with a more complete record.

3. On December 28, 2010, Allegany County, Maryland filed Comments wherein it opposed Riffin's Motion to Dismiss for Lack of Jurisdiction ("Comments").

4. In its Comments, Allegany County argued that the "difficulties ... are entirely of his own making." Nothing could be farther from the truth.

5. The "difficulties" are the result of (A) Allegany County's last minute decision to intervene in the underlying Abandonment decision; (B) CSX's decision to deed the Line to an entity that never had, nor never sought, authority to acquire the Line; (C) The STB's decision not to enforce 49 U.S.C. 10901 (which prohibits a non-carrier from acquiring a line of railroad without STB authority).

6. Riffin will remind the STB that Riffin's July 11, 2006 letter to the STB detailed what happened, and foretold that if CSX's error was not corrected, much litigation would ensue. The STB and CSX refused to correct the error. Much litigation has ensued. **None of this litigation is due to any mistake that Riffin made.**

7. Allegany County argued that Riffin's Motion to Dismiss should be rejected either because it was (A) untimely filed; (B) It was an impermissible reply to a reply; (C) It sought to reopen an administratively closed proceeding.

8. The **first** thing that an agency / court must do is to determine whether it has the requisite jurisdiction to hear and decide a matter. The issue of jurisdiction may be raised **at any time, even for the first time on appeal.** Jurisdiction **may not** be conveyed by consent, nor may the lack of jurisdiction be waived.[1] Consequently Allegany County's arguments are without merit, are contrary to law, and consequently, its rejection request must be denied.

9. Allegany County argued that the STB cannot grant the relief Riffin seeks: Dismissal of the Exemption Notices due to a lack of jurisdiction. The STB has the authority, and the duty, to

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[1] These tenets of jurisdiction are so fundamental, Riffin will not burden the STB with numerous citations. If the STB desires a memorandum of law on the subject of jurisdiction, Riffin will provide such a memorandum of law.

dismiss any proceeding over which it does not have the requisite jurisdiction. If there is no common carrier associated with the Georges Creek Line, then the STB has no jurisdiction over the Line.

10. To maintain the Exemption proceedings, the STB must first find that it has jurisdiction over the Line. To have jurisdiction over the Line, there must be a common carrier associated with the Line. Consequently, the STB **must** identify / determine who, if anyone, has the common carrier obligations associated with the Line.

11. Allegany County argued that "CSX has done all it needed to do to effect the transfer pursuant to the applicable OFA." Comments at 5. CSX was obligated to transfer the Line to Western Maryland Services, LLC, until it agreed to substitute Riffin as the purchaser. Once the STB granted Riffin authority to acquire the Line, CSX was obligated to transfer the Line to Riffin. Rather than transfer the Line to an entity that had authority to acquire the Line, CSX unlawfully transferred the Line to WMS LLC, a Maryland limited liability company that was created by Riffin on May 26, 2006, five months **after** the STB granted "WMS LLC" (an acronym for Western Maryland Services LLC, a W. Virginia limited liability company) authority to acquire the Line. CSX has decidedly **not** "done all it needed to do to effect the transfer pursuant to the applicable OFA."

12. Allegany County attempts to blame Riffin for the mess created by CSX, and argued that the mess is due to Riffin's "failure over the past four and half years to perfect his or WMS, LLC's interests in the Georges Creek Branch." Comments at 6. Riffin has diligently attempted to "perfect his interests" in the Line. All without success. It has been argued that all Riffin needed to do was record the WMS deed, then have WMS re-deed the Line to Riffin. The problem with that approach, is WMS LLC does not have authority to acquire the Line. And without such authority, the deed to WMS LLC is void as against public policy. Consequently any attempt by WMS LLC to transfer an interest that was acquired against public policy, would likewise be held to be void as against public policy.

13. It could be argued that WMS LLC only took title to the real estate and track material, which acquisition does not require STB authority. Likewise, WMS LLC could transfer its

interest in the real estate and track material to other non-carrier entities, all without prior STB authority. However this argument is of no avail to the STB, since the issue before the STB involves the common carrier obligations associated with the Line, **not** the real estate or track material associated with the Line.

14. WMS LLC, a Maryland limited liability company, does not have, nor has it ever had, authority to acquire the common carrier obligations associated with the Line.

15. To have jurisdiction over the Exemptions, the STB must first find that there is a common carrier associated with the Line. WMS LLC cannot be that common carrier, since it does not have authority to be a common carrier. That leaves CSX, Riffin and Western Maryland Services LLC, all of which do have authority to be the common carrier.

16. The STB has held that Riffin is not the common carrier, because Riffin did not argue / convince the STB that he has equitable title to the Line. The STB has stated that Riffin's equitable title argument must be made in a State court. And the STB has held that until it is determined that Riffin has a 'suitable interest' in the Line, Riffin cannot be the common carrier.

17. The arguments put forth by the STB to support its decision that Riffin is not the common carrier, are equally applicable to Western Maryland Services LLC, which also has no title, equitable or legal, to the Line.

18. That leaves CSX, which told the STB on July 10, 2006, that it had consummated the sale of the Line, and thus no longer was the common carrier.

19. At the moment, there is no common carrier associated with the Line. Without a carrier, the STB does not have jurisdiction over the Line. Without jurisdiction over the Line, the Exemptions must be rejected.

20. The ball is in the STB's court. If the STB wants jurisdiction, it must declare who the carrier is for the Line. The STB has authority to declare who the carrier is, if it so desires. But unless and until the STB makes that declaration, it does not have jurisdiction over the Line.

21. Riffin's bankruptcy trustee has the right to monetize whatever assets are in Riffin's bankruptcy estate. Riffin's interest in the real estate and track material may be in Riffin's bankruptcy estate. (Or it may not be, since Riffin has exempted that interest from his bankruptcy estate.) The common carrier obligations associated with the Line **presently are not** in Riffin's bankruptcy estate, nor may they ever be in Riffin's bankruptcy estate. (The moment the common carrier obligations become a part of Riffin's bankruptcy estate, Riffin's bankruptcy petition must be dismissed.)

22. I affirm under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge, information and belief.

James Riffin
1941 Greenspring Drive
Timonium, MD 21093
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 11th Day of January, 2011, a copy of the foregoing Response to Allegany County's Comments was mailed via first class mail, postage prepaid, to: John Heffner, Ste 200, 1750 K Street NW, Washington, DC 20006, to Charles Spitulnik, Kaplan Kirsch, Ste 905, 1001 Connecticut Ave NW, Washington, DC 20036, and was hand delivered to Lois Lowe.

James Riffin