

LAW OFFICES  
**JOHN D. HEFFNER, PLLC**  
1750 K STREET, N.W.  
SUITE 200  
WASHINGTON, D.C. 20006  
PH: (202) 296-3333  
FAX: (202) 296-3939

November 17, 2010

**BY E-FILING**

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, N.W.  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings  
NOV 17 2010  
Part of  
Public Record

**RE: STB Finance Docket No. 35436, Duncan Smith and Gerald  
Altizer-continuance-in-control-Verified Notice of Exemption**

228 257

228 258

**STB Finance Docket No. 35437, Georges Creek Railway, LLC-  
Operation Exemption**

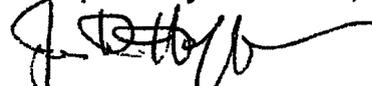
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**STB Finance Docket No. 35438, Eighteen Thirty Group, LLC-  
Acquisition Exemption**

Dear Ms. Brown:

On behalf of Duncan Smith, Gerald Altizer, Georges Creek Railway, LLC, and Eighteen Thirty Group, LLC ("the Petitioners"), I am e-filing their Joint Reply Comments to the Comments and Motions filed in the above-captioned proceedings by James Riffin and Lois Lowe.

Respectfully submitted,



John D. Heffner  
Counsel for Petitioners

cc: service list

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB FINANCE DOCKET NO. 35436**

**DUNCAN SMITH AND GERALD ALTIZER  
CONTINUANCE-IN-CONTROL  
VERIFIED NOTICE OF EXEMPTION  
UNDER 49 CFR §1180.2(d) (2)**

**STB FINANCE DOCKET NO. 35437**

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

**STB FINANCE DOCKET NO. 35438**

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

**JOINT REPLY COMMENTS OF DUNCAN SMITH,  
GERALD ALTIZER, GEORGES CREEK RAILWAY, LLC,  
AND EIGHTEEN THIRTY GROUP, LLC**

Submitted By:

John D. Heffner  
John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 296-3333

Dated: November 17, 2010

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**INTRODUCTION**

On November 3, 2010, James Riffin, appearing *pro se* and apparently acting on behalf of Lois Lowe as well, filed a Motion to Consolidate and three sets of comments in the above-captioned proceedings.<sup>1</sup> Then again, on November 8, the Protestants again filed pleadings titled “Motion to Stay and Motion to Revoke” in

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<sup>1</sup> Mr. Riffin and Ms. Lowe are collectively identified as “Protestants.”

each of these three cases.<sup>2</sup> Petitioners Duncan Smith, Gerald Altizer, Georges Creek Railway, LLC (“Georges Creek Railway”), and Eighteen Thirty Group, LLC (“Eighteen Thirty Group”, all collectively identified as “Petitioners”) file this Joint Reply to both the Comments and the various Motions. Petitioners will treat Protestants’ comments for what they are: a Petition to Revoke and will respond exercising their right to reply to a petition. 49 CFR 1104.13(a). To the extent that the Board may view Protestants’ filings as comments having no right of reply, Petitioners request the Board waive its prohibition against filing a reply to a reply<sup>3</sup> in the interest of providing a complete record in this proceeding. Protestants have shown no basis for either a revocation or stay of the exemptions and the relief they seek should be denied.

### STATEMENT OF FACTS

This transaction involves the acquisition and operation of about 8.54 miles of railroad line between Morrison, MD, milepost BAI 27.0, and Carlos, MD at the end of the line, milepost BAI 18.46, all in Allegany County, MD (the “Line”). The Line was formerly owned by CSX Transportation, Inc. (“CSX”), which obtained authority from the Board to abandon the Line in 2005. Subsequently, Western Maryland Services, LLC, a West Virginia limited liability company originally

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<sup>2</sup> Protestants also submitted limited comments in Docket No. AB-55 (Sub-No. 659x), CSX Transportation, Inc.-Abandonment Exemption-In Allegany County, MD

<sup>3</sup> 49 CFR 1104.13(c).

established by Gerald Altizer,<sup>4</sup> acquired the Line through the Offer of Financial Assistance procedures of the I.C.C. Termination Act (“the ICCTA”). During the time between the filing of the offer and July 10, 2006, James Riffin acquired majority control of that entity and arranged to be substituted as the purchaser.

In this transaction Eighteen Thirty Group, a limited liability company established by Duncan Smith and Gerald Altizer, will acquire the track and right of way comprising the Line while Eighteen Thirty Group’s corporate affiliate, Georges Creek Railway,<sup>5</sup> will operate the Line. While Mr. Riffin has consistently asserted that he is the actual or equitable owner of the Line,<sup>6</sup> the Allegany County land records continue to reflect that CSX is the record titleholder to the Line. The bankruptcy trustee, Mark Friedman, asserts the estate is the owner of the equitable interest in the Line and that, as trustee, he has the power to dispose of the Line subject to approval from the bankruptcy court. Mr. Friedman has signed an agreement to sell the Line to Eighteen Thirty Group subject to bankruptcy court approval.

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<sup>4</sup> Hereafter “Western Maryland Services”

<sup>5</sup> Duncan Smith, Gerald Altizer, and a third member not relevant here own Georges Creek Railway.

<sup>6</sup> Petitioners cite as one example of Mr. Riffin’s position an excerpt from a brief that he filed with the Court of Special Appeals of Maryland in which he stated, “Appellant [Riffin] is a federally licensed rail carrier. He owns the Georges Creek Branch Line of railroad (nine miles long) in Allegany County, Maryland and has a short line of railroad in Cockeysville, Baltimore County, Maryland.” See, brief of James Riffin dated November 1, 2010, at page 9, Exhibit A attached hereto.

## ARGUMENT

1. Protestants have not satisfied the Board's standards  
for revocation or stay of exemption proceedings

The standard for revoking an exemption is whether regulation is needed to carry out the rail transportation policy of Section 10101 of the ICCTA. *See*, 49 U.S.C. 10502(d). Requests to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted.

Minnesota Comm.Ry. Inc. -Trackage Exempt. -BNRR Co., 8 I.C.C.2d 31, 35-36 (1991); Finance Docket No. 31617, Chesapeake & Albemarle R. Co. -Lease, Acq. & Oper. Exemp. – Southern Ry. Co. (ICC served Sep. 19, 1991); and Finance Docket No. 31102, Wisconsin Central Ltd. - Exemp. Acq. & Oper. - Certain Lines of Soo L.R Co., (ICC served July 28, 1988). The party seeking revocation of an exemption has the burden of proving that regulation of the transaction is necessary. Id. Moreover under 49 CFR 1121.3, a party seeking the revocation of a notice of exemption shall provide all of its supporting information at the time it files its petition. Because Protestants have submitted no evidence in support of their revocation request, they have failed to meet their burden of proof and the requested relief should be denied.

Once an exemption becomes effective, as these exemptions will on November 18, 2010,<sup>7</sup> a revocation request is treated as a petition to reopen and revoke. Therefore, under 49 C.F.R 1115.3(b) it must state in detail whether reopening is supported by material error, new evidence, or substantially changed circumstances. Petitioners have failed to address these standards much less introduce any evidence to warrant a favorable finding under these standards.

Similarly, Protestants have shown no basis for granting a stay of these proceedings. As recently as October 6, 2010, the Board reiterated its longstanding criteria for granting a petition for stay. Middletown & New Jersey Railroad, LLC- Lease And Operation Exemption, STB Finance Docket No. 35412, STB served October 6, 2010 (denying a stay request in a case involving the lease and operation of a rail line). It held that a party seeking a stay must establish that: (1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be stayed; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed by a stay; and (4) the public interest supports the granting of the stay. Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir.

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<sup>7</sup> The three notices were filed on October 19, 2010, and will become effective 30 days later on November 18, 2010. *See, e.g.*, class exemption notices published in the Federal Register and posted on the Board's website in each of the above-captioned proceedings on November 4, 2010.

1958). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974). Protestants have not even identified, let alone, addressed the criteria for granting the stay they seek. Petitioners will show below that there is no basis to stay this transaction.

Stripped to their bare essentials Protestants assert four substantive bases in their comments and motions for which they seek to deny or delay Board authority for Petitioners to acquire and operate the Line. Petitioners will address each *seriatim* and show that no basis exists for either denial or revocation of the exemptions or a stay of these proceedings.

1. A notice of exemption cannot be issued in a controversial proceeding

There is nothing controversial about this proceeding other than the Protestants themselves. CSX Transportation has stated that it does not oppose this transaction and has in fact waived its statutory right to reacquire the Line under 49 U.S.C.10904 (f) (4) (A). No prospective shipper, public agency, or railroad union is opposing or is likely to oppose this transaction. In addition, Protestants have not alleged any circumstances here that have caused the Board to reject other transactions as being controversial and therefore inappropriate for handling under the class exemption procedures. For example, there is no showing that Petitioners intend to use the Line to handle any commodities that are subject to the Clean

Railroad Act amendments to the ICCTA. Nor do they allege that this transaction involves an effort to convert to or use a privately-owned noncommon carrier track or facility for common carrier railroad service. *See, e.g., Riverview Trenton Railroad Company-Petition for Exemption From 49 U.S.C. 10901 To Acquire And Operate A Rail Line In Wayne County, MI*, STB Finance Docket No. 34040, STB served May 13, 2003 and cases cited therein. So there is nothing controversial about this transaction to warrant either a revocation of the exemption or a stay. The *only* thing controversial here are the protestants themselves, James Riffin and Lois Lowe.

2. The notices here contain no material misrepresentations of fact

Regarding the identity of “the petitioners” for the purpose of the continuance-in-control filing, the notice correctly stated that Duncan Smith and Gerald Altizer are the *correct* parties as they are the ones seeking Board authorization for their common control of both Eighteen Thirty Group and Georges Creek Railway. Protestants are confused as to the various Board procedures involved here. Eighteen Thirty Group and Georges Creek Railway are the correct petitioners for the class exemption notices under 49 CFR 1150.31 for acquisition and operation, respectively, of a rail line but not for common control of railroad companies under 49 U.S.C. 11323 and the class exemption notices filed under 49 CFR 1180.2(d)(2). Furthermore, Protestants appear to object to

Petitioners' use of the continuance-in-control class exemption on the grounds the acquisition entity [Eighteen Thirty Group] and the operating entity [Georges Creek Railway] are "connected" and that Petitioners are contemplating an extension of their existing switching operation at Luke, MD. Protestants are wrong on all counts.

Contrary to Protestants' understanding of the continuance-in-control class exemption procedure, it is available for short line transactions where two newly established commonly controlled entities seek to own and operate the same piece of railroad. Petitioners cited two agency decisions in their class exemption notice filed in Finance Docket No. 35436<sup>8</sup> supporting that proposition. Protestants misunderstand the purpose of that class exemption which is intended to prevent a short line railroad from acquiring a series of contiguous individual lines to create a "system" with significant competitive impacts without the greater regulatory scrutiny afforded by a formal application or an individual petition for exemption.

**Cf. Railroad Consolidation Procedure: Explanation Exemption For Transactions**

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<sup>8</sup> See e.g., B. Robert Demento, Jr., and Baggio Herman Demento-Continuance In Control Exemption -BDB Company and Swanson Rail Transfer, L.P., STB Finance Docket No. 35400, STB served August 18, 2010 and John H. Marino--Continuance in Control Exemption--Delaware Transportation Group, Inc., Gettysburg Railway Company, Inc., and Evansville Terminal Company, Inc., STB Finance Docket No. 33505, STB served November 21, 1997.

Subject To The Statutory Consolidation Provision, Docket No. Ex Parte No. 282 (Sub-No. 15), ICC served July 13, 1992, 1992 ICC Lexis 149.<sup>9</sup>

As to Georges Creek Railway's operation at Luke, MD, this is a private noncommon carrier plantsite switching service performed for NewPage Corporation. It is not subject to the Board's jurisdiction. *See*, B. Willis, C.P.A., Inc.—Petition for Declaratory Order, STB Finance Docket No. 34013, STB slip op. at 2, served Oct. 3, 2001 *aff'd* 2002 LEXIS 24269 (D.C. Cir. 2002) (Private track is typically built by a shipper (or its contractors) to serve only that shipper, moving the shipper's own goods, so that there is no "holding out" to serve the public at large) and Hanson Natural Resources Company—Non-Common Carrier Status—Petition for Declaratory Order, Finance Docket No. 32248, ICC slip op. at 20-21, served Dec. 5, 1994 cited in Devens Recycling Center, LLC, Petition for Declaratory Order, STB Finance Docket No. 34952 , STB served January 10, 2007. Moreover, Petitioners have no current plans to extend their operations over CSX's line connecting Morrison with Westernport/Luke as CSX has no plans to dispose of that line.

3. Petitioners correctly represented that these transactions are exempt from Board environmental review

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<sup>9</sup> Involving a proposed expansion of the common control class exemption that the ICC eventually withdrew. New Procedures in Rail Acquisitions, Consolidations and Mergers, Docket No. Ex Parte No. 282 (Sub-No. 19), ICC served November 24, 1999.

In asking the Board to treat as a material misrepresentation Petitioners' assertion that these four interrelated filings are exempt from the environmental requirements of 49 CFR 1105, Protestants totally misconstrue those regulations.

49 CFR 1105.7(e) (iv) states:

“(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources....

(iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in 1105.7(e) (4) (iii) need not be supplied if the more detailed information in 1105.7(e) (4) (iv) is required.”

The traffic diversions that would implicate the Board's environmental review of a minor transaction such as this are from *rail to motor* [emphasis supplied] not from *motor to rail* [emphasis supplied] as would be the case here. In other words, Protestants got the traffic diversion provisions *backwards*!

Protestants also cited and misunderstood the provisions of 49 CFR 1105.7(e) (5) which state:

“(5) Air. (i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10502) to construct a

new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.”

Again, Protestants misinterpret this regulation because the traffic increase from no traffic to some traffic cannot be quantified. The Board addressed this very situation in Missouri Central Railroad Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company, STB Finance Docket No. 33508, STB slip op. served April 30, 1998 at 7,<sup>10</sup> where it stated:

“When a line currently carries no traffic, any resumption of service, no matter how small, represents an increase mathematically of infinite magnitude. But, the Cities have cited no instance, nor are we aware of any, where an increment of one train a day each way as proposed by MCRR has been deemed to suffice to trigger our environmental reporting and documentation requirements. The fact that the 100% standard is paired in the same sentence with an absolute standard of an increase of eight trains a day suggests that the 100% standard applies to an anticipated increment that greatly exceeds the one train a day each way operations proposed by MCRR. Moreover, MCRR's actions are most closely analogous to the situation that arises when a carrier reinstitutes service on a line where service has been discontinued. In such a case, under 49 CFR 1105.7(e) (5) (i) (C), the environmental requirements are not triggered unless the proposed operations will amount to at least eight trains per day. Reading the regulations as a whole, we cannot accept the Cities' interpretation of the environmental report and documentation requirements.”

*See also*, Morristown & Erie Railway, Inc. – Modified Rail Certificate, STB Finance Docket No. 34054, STB served June 22, 2004, *aff'd sub. nom.*, Town of Springfield New Jersey v. Surface Transportation Board, 412 F.3d 187 (D.C. Cir.

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<sup>10</sup> *Aff'd sub nom.*, Lee's Summit, Mo. v. STB, 231 F.3d 39, 42 (D.C. Cir. 2000).

2005). Accordingly, protestants have shown no basis for environmental review and no misrepresentation.

4. Petitioners correctly represented the Trustee's ability to convey title

Protestants also claim in a series of interrelated and hard to comprehend allegations that Petitioners have misrepresented their ability to acquire title to the Line and the associated common carrier obligation from the bankruptcy trustee. The gist of their allegations appear to be that CSX conveyed the Line to WMS LLC, the Maryland limited liability company controlled by James Riffin, that WMS has not filed for bankruptcy, that Riffin conveyed 96% of the track and right of way to other parties prior to his bankruptcy filing,<sup>11</sup> that the only thing in Riffin's estate is his 4% interest in WMS,<sup>12</sup> that Petitioners did not disclose the "infirmities" associated with the Line, and that the trustee therefore cannot convey either the track and right of way or the common carrier obligation associated with the Line to Petitioners. Comments of James Riffin dated November 3, 2010, at 4-5.

As a general proposition, a party wishing to acquire or operate a rail line must obtain authority or an exemption from authority from the Board under 49 U.S.C. 10901 for noncarriers desiring to enter the railroad business or under 49

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<sup>11</sup> Mr. Riffin represented to the bankruptcy court that the interests transferred to these individuals consisted of an interest in an entity identified as "WMS, LLC." See document submitted here as Exhibit B.

<sup>12</sup> This statement appears to contradict a previous statement that Mr. Riffin retained a 4% interest in the track and right of way.

U.S.C. 10902 for existing rail carriers acquiring additional lines or operations.

However, Board acquisition and operation authority is permissive. Prairie Central Ry. Co.—Acquisition & Operation, 367 I.C.C. 884, 885 (1983). It authorizes a transaction but it does not create any property rights. Accordingly, the Petitioners' ability to acquire an interest in the Line stems from the property interest the trustee has to convey and the bankruptcy's courts approval of that sale.

Apparently, Riffin tried to capitalize on the confusion by creating a Maryland limited liability company "WMS, LLC" which was the shorthand reference for Western Maryland Services, LLC. While Riffin was trying to get authority for the deed to the Line to be granted to himself (as he himself had paid the entire purchase price), CSX issued the deed to the Maryland entity WMS, LLC. Although Riffin subsequently obtained authority from the Board to be substituted for WMS, that never occurred. WMS did not record the deed. WMS did not assign the deed to Riffin. WMS did not issue its own deed to Riffin. CSX did not issue a deed in substitution to Riffin. Accordingly, the parties have proceeded with Riffin contending, whenever it so suited him, that he owns the Line and where it so suited him to declare otherwise, he has contended that he sold interests in WMS, LLC to several other parties including Ms. Lowe, Eric Strohmeyer, Zandra Rudo, and Carl Delmont.

Mr. Riffin's attempts to transfer partial interests in the Line to these other parties appear to raise another issue worthy of Board attention and enforcement. To the extent that Mr. Riffin has transferred an interest in a line of railroad without the purchaser's *first* obtaining Board acquisition and operation authority or an exemption from that authority, these transactions are illegal and voidable.

Consolidated Rail Corporation's Sales and Discontinuances, STB Docket No. Ex Parte No. 695, STB served May 17, 2010, and Pyco Industries, Inc.-Feeder Line Application-Lines of South Plains Switching, Ltd. Co., STB Finance Docket No. 34890, STB served August 3, 2006. Mr. Riffin also suggests in some of his filings that he has transferred interests in the Line to these individuals while retaining the common carrier obligation for himself. Petitioners are unaware of any efforts by Mr. Riffin's transferees or Mr. Riffin himself to obtain Board approval for these transactions. Petitioners urge the Board to require a reconveyance.

These matters will be addressed by the Bankruptcy Court through the Trustee's proceedings to have CSX issue a replacement deed to Eighteen Thirty Group as the Trustee asserts that Riffin is the equitable owner of the Line (as Riffin has so often contended) and thereby the Line is part of Riffin's bankruptcy estate. As such, the Trustee may transfer the Line subject to Bankruptcy Court approval. The simple fact of the matter is that Eighteen Thirty Group's acquisition from the trustee is subject to approval by the bankruptcy court.

### The alleged conflict of interest in representation

Having run out of substantive arguments, Protestants now challenge the ability of Petitioners' counsel to represent his clients before the Board on this series of transactions. According to Protestants, the undersigned counsel received a retainer from Mr. Riffin in connection with work for Western Maryland Services and represented Western Maryland Services, WMS, LLC, and Mr. Riffin himself before the Board in connection with an offer of financial assistance to CSX for the Line.

As is the case with Protestants' other allegations, this assertion contains only a small element of truth. The undersigned has continuously represented Gerald Altizer going back to 2005 with that individual's initial efforts to acquire the Line. It was Mr. Altizer who established Western Maryland Services to acquire the Line. Mr. Altizer had initially located financing for Western Maryland Services' acquisition. However, difficulties obtaining firm shipper commitments caused that financing to fall through. Faced with an imminent closing, Mr. Altizer accepted Mr. Riffin's willingness to finance the acquisition of the Line. In exchange for a cash infusion, Mr. Altizer sold Mr. Riffin a 98% interest in Western Maryland Services. The undersigned counsel continued to represent Mr. Altizer and Western Maryland Services in negotiations with CSX and before the Board during this period. In 2006 Mr. Riffin established WMS, LLC, and desired to transfer title to

the Line to himself personally. The undersigned advised Mr. Riffin that he represented Mr. Altizer and not Mr. Riffin but that he would handle the substitution filing as a courtesy. The undersigned has never represented either WMS, LLC, or Mr. Riffin. Therefore he is free to represent Mr. Altizer and his new business partner Duncan Smith in this series of transactions.

5. James Riffin's unauthorized practice of law

Since the Protestants have raised the issue of legal ethics, Petitioners feel obliged to advise the Board that Mr. Riffin appears to be engaged in the unauthorized practice of law before the Board. To the best of Petitioners' knowledge, Mr. Riffin is not a practicing lawyer nor an approved practitioner before the Board. As such, he is free to represent himself. But here he appears to be representing Ms. Lowe as well. The filings made under her name appear to be more or less identical to those submitted by Mr. Riffin in both content and even typographical style and format. Mr. Riffin served both sets of pleadings on the undersigned counsel in an envelope bearing his return address and containing sufficient postage for all sets of pleadings. See, a copy of envelop attached hereto as Exhibit C. It is inescapable that Mr. Riffin is representing others without being a licensed lawyer or practitioner. Petitioners request that the Board issue an order requiring Mr. Riffin to cease representing other parties including Ms. Lowe and

require Ms. Lowe to obtain independent representation if she wants to continue submitting filings to the Board.

**6. There is no basis for either revocation or a stay of this transaction**

Pure allegations aside, Protestants have submitted no evidence in support of their revocation request, they have failed to meet their burden of proof and the requested relief should be denied. They have not asserted, let alone, shown any reason for Board scrutiny or regulation of these series of exemption transactions. They have not indicated, let alone, proven any instance of a material misrepresentation by Petitioners. Nor have they shown any material error, new evidence, or substantially changed circumstances to warrant a reopening of the exemption decisions issued on November 4, 2010.

Regarding their stay request, Protestants have not shown that they are likely to prevail on the merits of this matter or any irreparable harm in the absence of a stay. On the other hand, Petitioners and the greater public will be harmed by a grant of a stay. Petitioners will be forced to postpone their plans to restore the Line to service. As a result they will be forced to defer needed capital expenditures to restore the Line to operation and the Line will continue to deteriorate with Winter approaching. Additionally, they will be unable to generate revenue from rail operations to offset funds they have already spent in acquiring the Line and railroad equipment. Potential shippers will lose from a stay because they will be

forced to continue using more expensive motor carrier service. And the public interest will suffer insofar as the status of this unused railroad asset continues in limbo with the track literally hanging on the side of a cliff. There is no basis for granting a stay.

### CONCLUSION

The simple fact of the matter is that neither of the Protestants has shown any basis for either revocation of the exemptions issued in Finance Docket Nos. 35436 through 35438 or stay of these proceedings. Accordingly, the Board should reaffirm that Petitioners may consummate these transactions as soon as the Board issues its decision in Docket No. AB-55, Sub-No. 659, granting an exemption from the provisions of 49 U.S.C. 10904(f) (4) (A), and as soon as the bankruptcy court approves the sale. Finally, to the extent required, the Board should require the reconveyance back to the estate of any interest in the Line that was transferred without Board authority and should prohibit Mr. Riffin from representing any parties before the Board other than himself.

Respectfully submitted

  
John D. Hefner  
John D. Hefner, PLLC  
1750 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 296-3333

Dated: November 17, 2010

## CERTIFICATE OF SERVICE

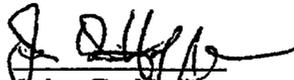
I, John D. Heffner, certify that I have sent a copy of the foregoing  
“Joint Reply Comments of Duncan Smith, Gerald Altizer, Georges Creek Railway,  
LLC, and Eighteen Thirty Group, LLC” this 17<sup>th</sup> day of November 2010 by first  
class mail, postage prepaid to the following named individuals:

Mr. James Riffin  
1941 Greenspring Drive  
Timonium, MD 21093

Ms. Lois Lowe  
1941 Greenspring Drive  
Timonium, MD 21093

Louis E. Gitomer, Esq.  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204

Mark J. Friedman, Esq.  
6225 Smith Avenue  
Baltimore, Maryland 21209

  
John D. Heffner

**EXHIBIT A**

IN THE  
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 2009

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No. 2948

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JAMES RIFFIN  
Appellant

RECEIVED  
NOV 01 2010  
BY COURT OF SPECIAL

v.

CIRCUIT COURT FOR BALTIMORE COUNTY, *et. al.*  
Appellees

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APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

THE HONORABLE JOHN G. TURNBULL, II, PRESIDING

(Circuit Court Case Nos.: 03-C-07-013308, 03-C-07-013983,  
03-C-08-000551, 03-C-08-008110, 03-C-08-011104 and 03-C-09-000064)

In re: Judge Turnbull's 1/29/10 Order

**TURNBULL - 2**

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**APPELLANT'S BRIEF**

James Riffin, *pro se*  
Appellant  
1941 Greenspring Drive  
Timonium, MD 21093  
(443) 414-6210

21. Appellant is a federally licensed rail carrier.<sup>5</sup> He owns the Georges Creek Branch line of railroad (9 miles long) in Allegany County, Maryland, and has a short line of railroad in Cockeyville, Baltimore County, Maryland.<sup>6</sup> He has tried, without success, to purchase lines of railroad in New Jersey, New York, Virginia, Mississippi and Oklahoma. He has a goal of reinstating freight rail service on the Cockeyville Industrial Track ("CIT"), which goes from Penn Station in Baltimore to Cockeyville. Norfolk Southern Railway Company ("NSR") has the right to operate on the CIT, but chooses not to provide service on the line. When NSR filed to abandon the CIT in 2006, Appellant put in a bid to purchase the line. Due to errors in NSR's abandonment application, the application was rejected. NSR recently filed a second abandonment application. Riffin submitted a bid to buy NSR's operating rights, then reinstate freight rail service to Cockeyville. The STB exempted the proceeding from the STB's Offer of Financial Assistance ("OFA") procedures, due to Riffin's failure to submit **verified** letters of support from Cockeyville rail shippers. A petition to reopen that STB decision is presently before the STB. If the petition to reopen is granted, six verified letters of support will be admitted into the record, proving the Line is needed for continued rail service. The STB's decision is also subject to two D.C. Circuit Petitions for Review, filed by other interested parties, which were docketed CADC Nos. 10-1130 and 10-1133.

22. In 2004, the Appellant began constructing a rail carrier maintenance-of-way<sup>7</sup>

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<sup>5</sup> See *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served August 18, 2006), .

<sup>6</sup> See *James Riffin – Acquisition and Operation Exemption – Veneer Mfg Co Spur – Located in Baltimore County, MD*, STB Finance Docket No. 35221. This line of railroad is only 70 feet away from Appellant's Cockeyville MOW facility, and thus is "adjacent" to Appellant's MOW facility.

<sup>7</sup> Maintenance-of-way refers to repairing and maintaining the tracks, signals, track bed and other structures forming a part of a line of railroad.

**EXHIBIT B**

None  b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF CUSTODIAN | NAME AND LOCATION OF COURT CASE TITLE & NUMBER | DATE OF ORDER | DESCRIPTION AND VALUE OF PROPERTY |
|-------------------------------|--|---------------|-----------------------------------|
|-------------------------------|--|---------------|-----------------------------------|

7. Gifts

None  List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF PERSON OR ORGANIZATION | RELATIONSHIP TO DEBTOR, IF ANY | DATE OF GIFT | DESCRIPTION AND VALUE OF GIFT |
|--|--------------------------------|--------------|-------------------------------|
|--|--------------------------------|--------------|-------------------------------|

8. Losses

None  List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| DESCRIPTION AND VALUE OF PROPERTY | DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS | DATE OF LOSS |
|-----------------------------------|--|--------------|
|-----------------------------------|--|--------------|

9. Payments related to debt counseling or bankruptcy

None  List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within one year immediately preceding the commencement of this case.

| NAME AND ADDRESS OF PAYEE  | DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR | AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY |
|--|---|--|
| Coon & Cole, LLC<br>401 Washington Avenue<br>Suite 501<br>Towson, MD 21204 |   | \$2,750.00   |
| Consumer Credit Counseling<br>757 Frederick Road<br>Catonsville, MD 21228  | 1/15/2010   | \$50.00  |

10. Other transfers

None  a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR | DATE      | DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED  |
|--|-----------|---|
| Edwin Kessler  | June 2008 | Sold steel beams to Mr. Kessler in exchange for Kessler posting a \$250,000 letter of credit. Case No.: 03-C-04-008920. |

| NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR  | DATE         | DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED   |
|---|--------------|--|
| Marco Minnie  | August 2008  | Sold equipment for \$10,000.00 -<br><br>Leica total station, Bobcat 873 (non-functional), Grove 30-ton crane, tree spade, concrete mixer truck, 35 KW generator. |
| Signsations<br>1941 Greenspring Drive<br>Lutherville Timonium, MD 21093<br>Tenant of LLC owned by Debtor    | 10/2008      | Clark forklift sold for \$500.00   |
| Eric Strohmeyer - no money<br>13 Beaver Run Lane<br>Cockeysville, MD 21030<br>Tenant of LLC owned by Debtor | 10/2008      | Track maintenance equipment and 15% interest in WMS, LLC, in exchange for railroad consulting work.  |
| Matt Bupp NJ 908 361 2435   | 11/2008      | Sol equipment for total of \$1,600.00  |
| Lois Lowe 443 226 5077<br>13 Beaver Run Lane<br>Cockeysville, MD 21030 cell                                 | January 2009 | Sold equipment and 36% interest in WMS, LLC for \$100,000.00.  |
| Carl Delmont<br>50 Scott Adam Road<br>Cockeysville, MD 21030  | April 2009   | Sold 16% interest in WMS, LLC in exchange for \$50,000.00.   |
| Zandra Rudow 410 344 1505<br>13 Beaver Run Lane<br>Cockeysville, MD 21030<br>Tenant of LLC owned by Debtor  | May, 2009    | Sold equipment and 30% interest in WMS, LLC, for \$100,000.00.   |

Note b List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

| NAME OF TRUST OR OTHER DEVICE | DATE(S) OF TRANSFER(S) | AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY |
|-------------------------------|------------------------|---|
|-------------------------------|------------------------|---|

11. Closed financial accounts

Note List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF INSTITUTION | TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE | AMOUNT AND DATE OF SALE OR CLOSING |
|---------------------------------|--|------------------------------------|
|---------------------------------|--|------------------------------------|

12. Safe deposit boxes

Note List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY | NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY | DESCRIPTION OF CONTENTS | DATE OF TRANSFER OR SURRENDER, IF ANY |
|--|---|-------------------------|---------------------------------------|
|--|---|-------------------------|---------------------------------------|

EXHIBIT C

RIFFIN  
194195D  
31093

USA FIRST CLASS



John Hoffman

STE 200

1750 K ST NW

Washington DC 20006

2000602322

