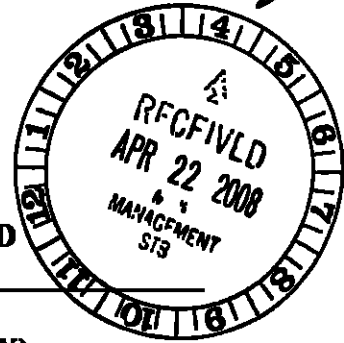


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-103 (Sub- No. 21X)

**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**

**ENTERED
Office of Proceedings
APR 22 2008
Part of
Public Record**

**COMMENTS REGARDING
KCSR'S REPLY TO
REQUEST FOR COMPENSATION
DUE TO INCREASED COSTS OF RESTORING LINE TO SERVICE
CAUSED BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

1. Now comes Raymond B. English and James Riffin ("E&R" or "Offerors"), who herewith file these Comments Regarding KCSR's Reply to Request for Compensation Due to Increased Costs of Restoring Line to Service Caused By Partial Dismantling of the Glass Road Bridge ("Comments"), and say

2. These Comments may be construed to be a reply to a reply, which is not permitted by the Board's rules. E&R would ask that the Board accept these comments for the purpose of providing the Board with a more complete record.

BACKGROUND INFORMATION

3. On February 22, 2008, the Board Served its decision In The Matter Of A Request To Set Terms and Conditions ("Decision") in the above entitled proceeding In its Decision, the Board stated *inter alia*:

If the Offerors accept the terms and conditions for the Entire Line, then by March 24, 2008, the Offerors may return to the Board with a request to determine the

compensation, if any, owed by the Kansas City Railway Company ("KCSR") due to increased costs of restoring the Remainder to service that was caused by the partial dismantling of the Glass Road Bridge ("Bridge").

4. On March 24, 2008, the Offerors filed their Request for Compensation, which listed the estimated cost to restore the Glass Road bridge.

5. On April 11, 2008, the Offerors filed a Supplement to their Request for Compensation, asking the Board to award E&R the costs associated with preparing their Request for Compensation

6. On April 14, 2008, the Kansas City Southern Railway Company ("KCSR"), filed its Reply to Request for Compensation Due to Increased Costs of Restoring Line to Service Caused By Partial Dismantling of the Glass Road Bridge ("KC Reply" or "Reply").

SUMMARY OF KC'S REPLY

7. In its Reply, KCSR argued the following points:

- A. KCSR should not be required to provide compensation for the partial dismantling of the Glass Road bridge for the following reasons:
 - a. KCSR did not dismantle the bridge, did not authorize Warren County to dismantle the bridge, and received no benefit due to the bridge being dismantled.
 - b. The bridge had not been ascribed a specific value by either party.
 - c. Providing E&R with compensation would result in KCSR receiving less than the constitutional minimum value of its property.
 - d. E&R should seek compensation from Warren County, rather than KCSR.
 - e. The Board has no authority to require KCSR to pay for actions that it did not do.
- B. The bridge would have needed to be replaced or substantially rebuilt before it could have been used.
 - a. The bridge's deck was rotted, and thus was not usable.
 - b. The ballast on the bridge was fouled, and thus was not usable.

- C. The bridge could be restored for \$19,277.
 - a. No engineering inputs are needed.
 - b. The bridge could be restored without replacing the piles that were destroyed.
 - c. KCSR would be willing to provide used material at no cost.
 - d. Whatever new materials were required, could be obtained at a cost which is less than the cost indicated by E&R.
 - e. The bridge could be restored using less rental equipment.

POINTS OF CLARIFICATION

8. In its footnote 2, KCSR argued only Riffin would be entitled to compensation, since only Riffin professed an interest in acquiring the Remainder portion of the Line at the time E&R's Offer of Financial Assistance was filed on December 20, then amended on December 21, 2007. Evidently KCSR has not comprehended that E&R have offered to purchase the entire line, JOINTLY. While it is true, back in December, 2007, Mr. English only had an interest in purchasing the Segment portion of the Line, Mr. Riffin has been able to persuade Mr. English of the propriety of acquiring an interest in the entire Line. Consequently, any compensation awarded, should be awarded to English and Riffin jointly. **Likewise, the deed to the Line should reflect the Grantees are Raymond B. English and James Riffin, as Joint Tenants.**

9. E&R have noted the Board has not specifically granted E&R specific authority to acquire and operate the Line. If such authority is not specifically needed, due to the fact that E&R asked the Board to set the Terms and Conditions by which E&R are acquiring the Line, then E&R would ask that the Board make this clear.

LAW REGARDING A RAIL CARRIER'S OBLIGATION TO MAINTAIN ITS WAY

10. Riffin would argue 49 U.S.C. §10903(d) imposes on the existing rail carrier a legal obligation to restore the unlawfully removed Glass Road bridge. This statute clearly states a rail carrier may not abandon its line, nor may it discontinue service over one of its lines, without prior Board authority. If there is no bridge to carry the Line over Glass Road, then the rail carrier cannot provide rail service on that portion of its right-of-way. And since a rail carrier has

a common carrier obligation to provide rail service on **all** portions of its lines, the rail carrier has an obligation to maintain **all** portions of its lines in serviceable condition.

11. In *Southern Pacific Transp Co - Abandonment Exemption - Los Angeles County, CA*, Docket No. AB-12 (Sub-No. 139X), Decided May 6, 1992, the Interstate Commerce Commission stated:

“A bona fide ‘holding coupled with the ability to carry for hire’ is the principal test for a common carrier ” Op. at 506. (Emphasis added.)

12. When KCSR acquired the Vicksburg Industrial Lead line of railroad in 1993, it needed Commission authority to do so. In acquiring the Line, KCSR also acquired its predecessor’s common carrier obligations associated with the Line. Since KCSR’s common carrier obligations compel KCSR to have the **present ability** to carry for hire, (which is a part of the principal test for a common carrier), and since the ability to carry for hire on a line of railroad is dependent upon the line of railroad being sufficiently maintained to permit carriage over the line of railroad, **the obligation to maintain one’s line is both a right and a duty one acquires when one is given the authority to become a common carrier.**

LAW REGARDING A RAIL CARRIER’S OBLIGATION TO PRESERVE ITS LINE DURING AN OFA PROCEEDING

13. In *Railroad Ventures, Inc v. Surface Transp. Bd*, 299 F.3d 523 at 552 (6th Cir 2002) (“*Railroad Ventures*”), the 6th Circuit held:

“Thus, while a railroad may ‘abandon any part of its railroad lines’ under 49 U.S.C. §10903(a)(1)(A), the STB is permitted to authorize a prospective buyer under the OFA provisions to purchase ‘that part of the railroad line to be abandoned’ under 49 U.S.C. §10904(d). The line owner can seek authority to abandon all or a part of its rail line, but if it does so, then, pursuant to §10904(f)(1)(B), a qualified OFA purchaser is entitled to determine how much of the line it wishes to acquire. *Fn 13.* Once the offeror seeks to purchase the entire rail line or a portion thereof as described in the abandonment petition, 49 U.S.C. §10904(c), the STB is then statutorily obligated to render a decision setting price and other sale terms as to what the offeror seeks to buy, within thirty days of a request to set conditions. 49 U.S.C. §10904 (f)(1)(A) Under this statutory provision,

then, it necessarily follows that **neither the abandoning rail carrier nor the STB can alter or amend what the OFA buyer has offered to buy; rather, the STB can only set the terms on what the offeror has proposed to purchase.**

In short, once the owner of a rail line submits a petition seeking the STB's authority to abandon the line, it must allow a prospective OFA purchaser the opportunity to determine how much of the line to acquire, **as the line is described in the abandonment petition.** Thus, at the point of filing the abandonment petition the abandoning rail line owner cannot reduce or diminish the rail line or the nature of the property interests associated with the line. Because a rail line owner is subject to the STB's jurisdiction until such time that the line has been properly abandoned or sold, it therefore **MUST maintain the status quo with respect to its property interests in the rail line as described in its abandonment petition.**" (Emphasis added.)

- 14 "In this respect, it is evident that a rail line embraces more than just the track necessary for the provision of rail service. See *Iowa Terminal*, 853 F.2d at 965 (rejecting the abandoning railroad's attempt to limit the transfer of land to two, rather than ten, acres, even though eight acres of land had been leased for nonrail purposes for several years, since "[t]he purpose of the statute empowering the [STB] to mandate a sale is to keep viable lines in operation"), see also *In re Boston & Maine Corp.*, 596 F.2d 2, 6 (1st Cir. 1979) (noting that a " 'railroad line' is not merely the service being provided, but the physical properties and interests belonging to the debtor that constitute the line"). *Railroad Ventures* at 553.

E&R'S COMMENTS

- 15 E&R have made it quite clear that E&R have offered to acquire all of the Line:

Including "any and all appurtenances thereto, and all improvements located thereon, and any and all easements, right-of-ways and rights of ingress and egress related thereto" (§1, PSA).

16. The 6th Circuit, in *Railroad Ventures, id.*, made it clear that a prospective OFA purchaser has the right to acquire the line, **"as the line is described in the abandonment petition,"** "that a rail line embraces more than just the track necessary for the provision of rail service," and that a rail carrier **"MUST maintain the status quo with respect to its property interests in the rail line as described in its abandonment petition."**

17 At the time KCSR filed its abandonment exemption, the Glass Road bridge was described in the abandonment petition, and was intact and serviceable. Since a rail carrier **must** maintain the status quo, and **must** convey everything described in its abandonment exemption, if requested by the offeror, KCSR has a duty to convey the Line with an intact Glass Road bridge, or in the alternative, to provide the Offerors with sufficient capital so that the Offerors may restore the Glass Road bridge

18. It does not matter if portions of a Line are destroyed by an Act of God, or by an act of man A rail carrier has a common carrier obligation to maintain its line.

19. The Purchase and Sale Agreement ("PSA") between KCSR and the City of Vicksburg specifically stated:

"The risk of loss or damage to the Railway Property by casualty or condemnation prior to the Railway Property Closing shall be borne by Seller, and thereafter shall be borne by Buyer." PSA ¶17.

"Likewise, from the effective Date hereof until the consummation and completion of the Railway Property Closing, Seller (i) shall maintain the Railway Property in substantially the same condition that it is in upon the Effective Date hereof." PSA ¶18.

20. KCSR has argued that it did not give Warren County permission to remove the Glass Road bridge. While this statement may be technically correct, it does not fully represent the situation In Pete Goodman's September 20, 2005 E-mail to Allen Pepper, Exhibit C of KCSR's Reply, Mr. Goodman clearly states that he met with Mr. Flanders (a Warren County Supervisor), and clearly states that he "told him that if this section of track was not going to be used then we would certainly entertain the idea of removing this bridge if Warren county could dispose of the creosoted materials." Furthermore, KCSR has stipulated that it never performed any maintenance on this portion of its right-of-way for more than 15 years, that "Cudzu has taken the bridge over and the rail is taken up South of this location," Exhibit C, KCSR's Reply, and that the rail north of this location was removed by the MidSouth Corporation prior to KCSR's purchase of the Line in 1993. None of the photographs entered into the record depict any "No Trespassing" signs Attached are two photographs. The top photograph was taken by Mr. Buckley on February 27, 2008. The top photograph clearly shows a house trailer and a car port

permanently located on the right-of-way, just south of the Glass Road bridge. The bottom photograph, which was taken by Bobby Carpenter, P.E., during the first week of February, 2008, shows the car port depicted in the top photograph, was erected about 5 feet from the edge of the rail. KCSR has never objected to this significant encroachment upon its right-of-way. In 2001, KCSR refused to provide service to Hancor, Inc., since the Line had been *de facto* abandoned. To a local Warren County Supervisor, it would have appeared that KCSR had abandoned this portion of its Line. So when the newly elected Supervisor, Mr. Lauderdale, ordered the Warren County road crew to dismantle the Glass Road bridge, it was not obvious that the bridge was needed, or wanted, for railroad purposes.

21. KCSR did not give Warren County permission to dismantle the bridge. The fact that KCSR did not explicitly grant Warren County permission to remove the Glass Road bridge does not relieve KCSR of its common carrier obligation to maintain its line of railroad in the same condition it was in at the time KCSR filed its abandonment exemption. Had the bridge been washed out by flood waters, it still would have been KCSR's duty to restore the bridge [in spite of the fact that KCSR did not give God / nature permission to remove KCSR's bridge].

22. It may be noted, on April 20, 2008, the Mississippi river crested at 51.0 feet in Vicksburg, which is the 3rd highest the river has been in Vicksburg. The highest recorded flood was in 1927. The second highest flood was in 1973. Once the waters recede, the bridges on the Line will be reinspected to see if any of them were damaged by the April 20, 2008 flood.

23. The bridge had not been prescribed a specific value. Whether each particular appurtenance or improvement has been prescribed a specific value is not relevant. The value the Board is obligated to prescribe for the Line, is the value for the Line's highest and best **non-rail** use. *Chicago & North W. Transp Co.*, 363 I.C.C. 956, 958 (1981), *aff'd* 678 F.2d 665 (7th Cir. 1982).

"Because the provisions of section 10905 [now 10904] 'generally affect only those lines which ... have been found not economically viable,' a railroad intent on abandoning a line is fairly compensated when it receives 'what [it] would have had but for the taking,' namely, 'the nonrail market value of [its] assets.' " *Iowa Terminal R Co v I.C.C.*, 853 F.2d 965 (D.C. Cir. 1988) at 968-969.

24. If the City of Vicksburg had determined that the Glass Road bridge had a non-rail-use value of zero, then that is what KCSR is entitled to receive for an intact Glass Road bridge. If the City of Vicksburg had purchased the Line, it could have insisted, under ¶¶ 1, 17 and 18 of the PSA, that KCSR replace the bridge, or compensate the City of Vicksburg for the cost to restore the bridge. Likewise, the City of Vicksburg could have determined that the bridge had no value to the City, and could have waived its rights under ¶¶ 1, 17 and 18 of the PSA

25. *Railroad Ventures* held the value of a line is to be determined as of the date the rail carrier files its abandonment petition. In the instant case, as of the date KCSR had filed its abandonment exemption, the City of Vicksburg had offered KCSR \$4,500 per acre for the non-track-material portions of the Line. In accordance with its precedents, the Board determined the non-rail value of the non-track-material portions of the Line was the \$4,500 per acre the City of Vicksburg had offered. Consequently, the \$4,500 per acre value placed on the non-track-material assets associated with the Line, represents the Constitutional minimum value for the Line. The Offerors have agreed to provide KCSR with this sum of money. Therefore, KCSR will be getting the Constitutional minimum value for this Line.

PROVIDING COMPENSATION WOULD NOT RESULT IN KCSR RECEIVING LESS THAN THE CONSTITUTIONAL MINIMUM VALUE FOR THE LINE

26. The 6th Circuit in *Railroad Ventures* specifically held the Offeror is entitled to whatever the rail carrier had at the time it filed its abandonment petition. A rail carrier's duty to maintain its line continues until it either sells its line, or receives authority to abandon the line. Risk of loss is always on the seller, unless specifically assumed by the buyer. In this case, the PSA between KCSR and the City of Vicksburg specifically stated risk of loss was on KCSR.

27. In exchange for the Offerors agreeing to give KCSR the Constitutional minimum value of the Line, the Offerors are entitled to whatever assets KCSR had at the time it filed its abandonment exemption. A rail carrier has a duty to maintain and preserve its assets until the moment they are either sold, or abandoned. At the time KCSR filed its abandonment exemption, the Glass Road bridge was intact and serviceable. Consequently, the Offerors have a legal right

to receive an intact and serviceable Glass Road bridge. To deprive the Offerors of their right to receive an intact and serviceable Glass Road bridge, would deprive the Offerors of their statutory right to obtain whatever assets KCSR had at the time it filed its abandonment exemption.

28. KCSR has two choices It could have insured the assets for their replacement value, or it could have decided to self-insure the assets. KCSR has not provided any information with regard to whether it has insurance on its various assets. If it does, then it can submit a claim to its insurance company, just as one would submit a claim if one's house burned down In the alternative, it could file suit against Warren County requesting compensation for the damage Warren County inflicted on the Glass Road bridge.

THE OFFERORS SHOULD NOT SEEK COMPENSATION FROM WARREN COUNTY

29. KCSR has argued the Offerors should seek compensation from Warren County, not KCSR. The problem with this argument, is the Offerors did not own the bridge or the Line at the time Warren County demolished the bridge, KCSR did. KCSR clearly would have legal standing to sue Warren County. The Offerors had a voidable equitable interest in the bridge. If the Offerors were to file suit against Warren County, the Offerors would have to convince a Warren County court that the Offerors had sufficient legal interest to give them standing to file suit against Warren County. In addition, Warren County could invoke their sovereign immunity as a defense, which could preclude the Offerors from recovering any monetary damages from Warren County Since the bridge was part of a line of railroad, and since no one can abandon a line of railroad without Board authority (either directly or adversely), KCSR may be able to successfully argue KCSR's federal common carrier rights and obligations with respect to the Line, preempt Warren County's sovereign immunity. Since the Offerors did not have any common carrier rights or obligations associated with the Line at the time Warren County demolished the Line, the Offerors would not have this preemption argument available, and thus would have a much more difficult time overcoming Warren County's sovereign immunity defense.

THE BOARD HAS THE AUTHORITY TO REQUIRE KCSR TO PAY FOR ACTIONS IT DID NOT DO

30. Riffin would argue the Board has the authority, and duty, to order KCSR to either restore the Glass Road bridge, or in the alternative, to provide the Offerors with sufficient capital so that they may restore the Glass Road bridge. The 6th Circuit stated in *Railroad Ventures*: “Because a rail line owner is subject to the STB’s jurisdiction until such time that the line has been properly abandoned or sold, it therefore **MUST maintain the status quo with respect to its property interests in the rail line as described in its abandonment petition.**” In *Railroad Ventures*, the Board ordered the rail carrier to compensate the offerors for infrastructure that had been destroyed. The Board’s order was affirmed by the 6th Circuit.

31. The legal basis for the Board’s authority to order a rail carrier to restore / maintain its line of railroad, is derived from the Interstate Commerce Act / Interstate Commerce Commission Termination Act. The removal of a necessary component of a line of railroad, would constitute an act of abandonment. Abandonment of a line of railroad, or any portion of a line of railroad, is unlawful, unless pursuant to Board authority 49 U.S.C. §10903 “The Board may bring a civil action – (1) to enjoin a rail carrier from violating sections 10901 through 10906 of this title, or a regulation prescribed or order or certificate issued under any of those sections ” 49 U.S.C. §11702. It matters not whether the Glass Road bridge was removed by KCSR, by Warren County, by nature, or by vandals KCSR has a common carrier duty to maintain its way. And if its fails to maintain its way, then the Board may, pursuant to 49 U.S.C. §11702, compel KCSR to maintain its way, and may, pursuant to 49 U.S.C. §11901, impose civil penalties upon KCSR if KCSR fails to comply with an order of the Board.

32. The offerors would further argue they also have a cause of action against KCSR for the unlawful removal of the Glass Road bridge, pursuant to 49 U.S.C. §11704 (b), which states.

“(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part ” (Emphasis added.)

33. While to date the Offerors have not filed a complaint with the Board under 49 U.S.C. §11701(b), nor have the Offerors filed civil suit pursuant to 49 U.S.C. §11704 (c)(1), it would not take much prodding to induce the Offerors to do so.

CONDITION OF THE BRIDGE

34. Deck and ballast retaining timbers. KCSR has argued the deck and ballast retaining timbers were deteriorated to the point where they would have had to be replaced. This conclusion by KCSR was based on Mr. Dunsworth representation that he had spoken with Mr. Winans, the Warren County road crew supervisor who supervised the demolition of the bridge. According to Mr. Dunsworth, Mr. Winans told Mr. Dunsworth that the deck wood was rotted

35. When Mr. Riffin spoke with Mr. Winans, Mr. Winans characterized the wood as being “splintered” and “broken.” When Mr. Riffin spoke with the Jeff Davis landfill operator, he characterized the wood as being “splintered” and “broken.” Both stated most of the cross ties were rotted. Wood, when subjected to high forces, such as those typically associated with demolition by heavy equipment, shatters, splinters and breaks. Consequently, the wood taken to the land fill would be expected to be splintered and broken. The life expectancy of a cross tie in Mississippi is 15-20 years. The cross ties that were on the Glass Road bridge were probably installed in 1966, when the bridge was rebuilt. When the bridge was demolished in 2008, these cross ties would have been 42 years old. Given the age of the cross ties, they probably would have been rotted out. The bridge timbers, on the other hand, have a much longer life expectancy. Ballast decks are coated with tar. Any water falling on the ballast does not come into contact with the deck, due to the coating of tar. The ballast retaining timbers have a gap between them and the bridge deck, which lets water drain off the deck. The deck, and timbers under the deck, seldom get wet, and when they do get wet, quickly dry off, since all surfaces are exposed to air. Three of the four sides (top, outside, bottom, due to spacers) of the ballast retaining timbers are exposed to air, so any water coming into contact with them, quickly evaporates. Due to the low moisture content in the decking, substructure timbers and ballast retaining timbers, their life expectancy is much greater than the life expectancy of a cross tie, which only has one surface exposed to the air.

36. KCSR also made reference to Pete Goodman’s February 25, 2008 E-mail, wherein Mr. Goodman stated: “The only thing worth anything with the bridge is the scrap cost of the beams. The substructure was timber and not in very good shape.” It should be noted, this E-mail was generated almost a month after the bridge was demolished. This E-mail, as written, suggests Mr.

Goodman visited the bridge after it was demolished, then concluded the remaining beams were not in very good shape, and only had value as scrap. If this is what Mr. Goodman intended to say, then this conclusion by Mr. Goodman would contradict KCSR's argument that the remaining portions of the bridge could be reused. In Mr. Goodman's earlier E-mail, dated September 20, 2005, the only negative comment made by Mr. Goodman was that the beam spans were "too light." In Mr. Goodman's April 14, 2008 verified statement, he stated that during his 2005 visit to the bridge, he "noted that at least the deck boards and ballast retainers on top of the trestle would all have to be replaced." Unfortunately, Mr. Goodman did not provide copies of his 2005 notes wherein this note would have been recorded. The only written notes provided by Mr. Goodman were his 2005 and February, 2008 E-mails. Mr. Goodman's 2005 E-mail did not reference the condition of the deck or the ballast retaining timbers.

37. As Mr. Niemeyer, P.E., stated in paragraph 5 of his April 21, 2008 Verified Statement

"Since Warren County may be required to reimburse KCSR for the costs to restore the Glass Road bridge, I would carefully scrutinize any statements made by a Warren County employee that would tend to diminish the value of the Glass Road bridge, or the costs to restore the Glass Road bridge. In particular, I would be looking for corroborative evidence that would either support, or contravene, statements made by a Warren County employee."

38. This statement by Mr. Niemeyer would be equally applicable to statements made by KCSR employees, such as Mr. Goodman. The only contemporaneous writing provided by Mr. Goodman was his September 20, 2005 E-mail. In this E-mail, Mr. Goodman made no comment regarding the condition of the deck and ballast retaining timbers.

39. Attached is a color copy of a photograph that was provided to E&R by KCSR. The photograph is labeled: "KCSR-045." This photograph clearly shows the ends of the deck boards, and clearly shows the ballast retaining timbers. Attached to KCSR's Environmental and Historic Report section of its abandonment exemption, is a photograph identified as "No. 14." This photograph also clearly shows the ends of the deck boards of the bridge. These two photographs clearly show the deck boards and ballast retaining timbers were in good condition. (No evidence of decay can be seen on either photograph, with the exception of about one foot of one deck board in photograph No. 14.) Photographs in the record clearly show the remaining

timbers of the bridge are still in serviceable condition. Photographs in the record, and Mr Buckley's inspection report for the remaining, older bridges on the Line, clearly show the remaining bridges are in good condition. The bridge at MP 225.85, which is similar to the Glass Road bridge, and which is four years older than the Glass Road bridge, was found to be in excellent condition by Mr Buckley. This bridge is currently being used by the Vicksburg Southern Railway Company to deliver rail cars to Foam Packaging. Mr. Niemeyer stated in ¶6 of his April 21, 2008 V.S., that timber trestle bridges have a life expectancy in excess of 50 years. The Glass Road bridge was only 42 years old. There is nothing in the record which would indicate that the Glass Road bridge was defective in any respect. Mr. Niemeyer, a professional railroad engineer with extensive railroad bridge experience, carefully scrutinized all of the photographic evidence, Mr. Carpenter's expert professional engineering input, and Mr. Buckley's bridge inspection reports on the bridges on the Line. From this wealth of information, Mr. Niemeyer concluded the Glass Road bridge in all likelihood was in serviceable condition prior to its untimely demolition. The only thing that needed to be done to begin using the Glass Road bridge, was to remove the Cudzu that was growing on portions of the bridge, then replace some of the cross ties. Since replacing the cross ties was a cost the Offerors would have had to bear, this cost was not included in the estimate to restore the Glass Road bridge.

40. **Deck ballast.** KCSR has argued the ballast on the deck was so fouled, it was not usable. Fouled ballast is not unusual. April 21, 2008 V.S. Niemeyer at ¶23. Since the bridge was destroyed, the existing ballast was lost, and now must be replaced.

41. **Beam spans.** Mr. Goodman characterized the beam span as "too light." This is contradicted by Vicksburg Southern Railway's present, continuing use of the bridge at MP 225.85, which has similar spans.

NEED FOR ENGINEERING SERVICES

42 Mr. Dunsworth, on page 12 of his V.S., made the following statement:

"I am at a loss to explain why Mr. Streele has included an engineering input here. As a general matter, engineering costs are only required in connection with the installation of

a new bridge, not an existing one. The fact that part of the Glass Road Bridge has been partially dismantled does not warrant or require incurring the cost of hiring an engineer, and this would be so even if the Bridge were to be somewhat re-configured, as I have proposed. All that is required here would be the measurement of timber components and the use of a builder's level for the piling elevations, and these do not require the services of an engineer."

43. Mr. Dunsworth is not an engineer. While he has had considerable practical experience maintaining timber bridges, he would not have the requisite knowledge and credentials to design a bridge. Due to his lack of engineering training, he does not have the requisite skills to ascertain what service load stresses must be evaluated, nor does he have the requisite skills to design a network of piling to transfer those service load stresses to the underlying earth

44. The Federal Railroad Administration ("FRA") has published its Statement of Agency Policy on the Safety of Railroad Bridges in Appendix C to 49 CFR Part 213. On September 11, 2007, the FRA issued its Safety Advisory 2007-3, which reiterated the FRA's policy that railroad bridges subjected to unusual impacts should be inspected by a qualified railroad bridge inspector (such as Mr. Dunsworth), then evaluated by a qualified railroad bridge engineer (such as Mr. Niemeyer). Pertinent portions of Appendix C are quoted below:

"2. Capacity of Railroad Bridges. (a) Determination. The safe capacity of bridges should be determined by competent engineers using accepted principles of structural design and analysis.

(c) Rating. The factors which were used for the design of a bridge can generally be used to determine and rate the load capacity of a bridge provided:

(i) The condition of the bridge has not changed significantly. (Emphasis added.)

"9 Special Inspections of Railroad Bridges. (a) A special bridge inspection should be performed after an occurrence that might have reduced the capacity of the bridge, such as ... an unusual impact "

"11. Railroad Bridge Inspectors and Engineers. (a) Bridge inspections should be performed by technicians whose training and experience enable them to detect and record indications of distress on a bridge. Inspectors should provide accurate measurements and other information about the condition of the bridge in enough detail so that an engineer can make a proper evaluation of the safety of the bridge.

(b) Accurate information about the condition of a bridge should be evaluated by an engineer who is competent to determine the capacity of the bridge. (Emphasis added.)

“13. Special Considerations for Railroad Bridges. Railroad bridges differ from other types of bridges in the types of loads they carry, in their modes of failure and indications of distress, and in their construction details and components. Proper inspection and analysis of railroad bridges require familiarity with the loads, details and indications of distress that are unique to this class of structure. Particular care should be taken that modifications to railroad bridges, ... are suitable for the structure to which they are to be applied. Modifications should not adversely affect the serviceability of the bridge nor its accessibility for periodic or special inspection (Emphasis added.)

45 The Glass Road bridge was subjected to “unusual impacts ” [It was violently demolished using heavy demolition equipment. A large number of piles were broken by subjecting the piles to destructive lateral forces.] The FRA’s Statement of Policy states that when a railroad bridge has been subjected to “unusual impacts,” it needs to be “evaluated by an engineer.”

FRAMED BENT CONSTRUCTION

46. Mr. Dunsworth suggested the Glass Road bridge could / should be rebuilt using “framed bent construction,” rather than redriving piles to replace the piles that were broken off Paragraph 13 of Appendix C of 49 CFR 213, states **“Particular care should be taken that modifications to railroad bridges, ... are suitable for the structure to which they are to be applied. Modifications should not adversely affect the serviceability of the bridge nor its accessibility for periodic or special inspection ”** Mr. Dunsworth’s framed bent construction, would be a significant “modification.” In addition, the framed bents would be placed onto the existing broken-off piles below grade. This type of construction would “adversely affect ... its accessibility for periodic ... inspection.”

47. When the piles were broken off, the structural integrity of the piles was compromised for several feet below grade [Inspection of the piles would / did show the piles were splintered.] For framed bent construction, the earth adjacent to the broken-off piles would have to be excavated to a depth below the deepest crack of the most damaged pile. All of the piles in that bent would have to be cut off at this depth. [Mr. Dunsworth suggested using framed bent construction would eliminate the cost of cutting piles. Dunsworth V.S. at p. 16. The reality is that at least 24 piles will need to be cut, even if one used framed bent construction, since 24 piles were damaged. One will either be cutting broken-off piles, or cutting driven new piles.] The framed bent then would

be built on top of the remaining portion of the broken-off pile. Placing framed bents below grade, could adversely affect the bearing capacity of the pile. [The majority of a pile's load carrying capacity is developed due to the friction between the surface of the pile and the adjacent earth. If one removes the earth adjacent to a pile, then that earth is no longer available to provide support for the pile (even when the earth is placed back into the hole). Consequently, excavating below the existing grade, could diminish the load bearing capacity of the broken-off piles. Given that the piles were broken off, rather than cut off, splinter-cracks in the piles would be expected below grade. Removing this supporting earth, could diminish the load bearing capacity of the broken-off piles. If one begins excavating adjacent to the broken-off piles, then discovers the deepest crack is several feet below grade, new piles would have to be driven anyway. Trying to do framed bent construction thus could escalate the cost of restoring the bridge. Time and money would be wasted excavating next to the broken-off piles, then refilling the trench and compacting the earth prior to driving new piles anyway. And since the earth had been disturbed, the new piles would have to be driven that much deeper, thereby further increasing costs.]

48. Using framed bent construction would also place structural components below grade, where they would not be readily accessible for inspection. This type of construction would contravene the FRA's Statement of Policy on railroad bridges. Furthermore, placing these structural components in the earth, would subject these components to corrosion and accelerated deterioration, which would cause premature failure, which would not be readily noticed, since it would be buried in the earth. In effect, an accident waiting to happen.

49 The main reason Mr. Dunsworth suggested framed bent construction, was to avoid the rental cost of a crane with a pile driving attachment. However, Mr. Dunsworth suggested several times (V.S. Dunsworth at p.10, fn 5; p. 12, fn 7; p.18, fn 12), that 12 piles may still have to be driven into the earth (rather than the 24 piles Mr. Steele specified). If one were to drive 12 piles, one would need a crane with a pile driving attachment. So Mr. Dunsworth's suggestion that a crane with a pile driving attachment would not be needed, is without merit, and is contradicted by his own testimony.

50. It should be pointed out that the piles in bents 2 and 3 may have been disturbed during the demolition of the bridge, and should be evaluated to determine whether they still have sufficient bearing capacity. [One evaluates the bearing capacity of a pile by pounding on it with a pile driver. If the pile moves when it is struck by the pile driver, then its bearing capacity has been compromised. (Typically one pounds on a pile until it stops moving.) If any of the piles in bents 2 and 3 were to move when struck by a pile driver, then a new pile would have to be driven, since “spliced” piles are structurally less sound than single-piece piles] The cost for this evaluation was **not included** in the cost estimate prepared by Mr Steele. Rather than trying to evaluate the bearing capacity of the remaining piles, Mr. Steele elected to replace the piles.

51. On p.11 of Mr Dunsworth’s V.S., he indicated a maximum speed limit of 25 mph would have to be imposed on the bridge, if his framed bent construction method was used This is far less than the 60 mph speed limit the bridge was designed for. His approach to restoring the bridge obviously would result in a structurally inferior bridge.

52. The materials costs obtained by Mr. Steele (see the Attached materials cost prepared by The Burke-Parsons-Bowlby Corporation), were only good until April 15, 2008. Since the price of crude oil, diesel and creosote has escalated during the past 30 days (crude went from \$90 per barrel to over \$115 a barrel; diesel escalated from \$3.80 a gallon to \$4.25 a gallon), it is expected the costs of materials will be significantly higher than the costs adduced by Mr. Steele. So if anything, Mr Steele’s cost estimate is less than what it will actually cost to restore the Glass Road bridge.

USING USED MATERIAL

53. KCSR has suggested it would provide used material from a track construction job in Texas. KCSR has further suggested this used material would be suitable, without providing any documentation regarding the condition of this used material. If this used material were suitable for timber trestles, then one would rightfully question KCSR’s motives when offering to give it away. If this used material were truly usable, KCSR would want to keep it so KCSR could use this material, rather than purchasing new material, on its own timber bridges. Which gives rise to the question: Why would KCSR volunteer to give away good timbers, if for each piece it

gave away, it would have to purchase a new piece to replace it? It would make better economical sense to save these good timbers so that they could be used on KCSR's own timber bridges.

54. Used timbers have no known structural characteristics. Used timbers may have deteriorated on the interior, where the deterioration is not detectable. Used timber may have been overstressed, either in the structure from which they were removed, or during the removal process. Used timbers may have undetectable hairline fractures. In short, used materials are unknowns. As paragraph 13 of Appendix C of 49 CFR 213 states: "Railroad bridges differ from other types of bridges in the types of loads they carry, in their modes of failure and indications of distress, and in their construction details and components." Using used materials in a railroad bridge would be a classic case of "penny wise, pound foolish." If one were to reconstruct the Glass Road bridge with used materials, and the bridge were to fail, who would be liable for the resulting carnage? KCSR, since it provided the material, and certified it was suitable for the intended purpose? The Board, since it ruled the cost to restore the Glass Road bridge should be based on the proviso that KCSR would provide used materials? Warren County, since but for the fact that it had demolished the bridge, the bridge would not have been restored with used materials? If used materials were to be used to restore the Glass Road bridge, and the bridge were to fail, resulting in one or more fatalities, you can be assured the attorney for the deceased victim(s) would instantly be seeking damages from any and all parties who acquiesced to the notion of using used materials.

NEW MATERIAL COSTS

55. Mr. Dunsworth estimates 18-foot long timber sills could be obtained, f.o.b. Glass Road bridge, for \$200.00 each (Dunsworth V.S. p. 20). Mr. Steele got a firm quote of \$370 each for the same size timbers that were only 14-feet long. Mr. Dunsworth indicated brace boards could be obtained for \$53 each (Dunsworth V.S. p. 21), while Mr. Steele got a firm quote of \$71 each. Mr. Dunsworth only allowed for one brace board, when five will be needed. Unfortunately, Mr. Dunsworth did not reveal the name of the vendor where one could obtain bridge timbers for half-price, nor did he reveal the name of the vendor where one could obtain bridge hardware for half-price. Perhaps the vendor is selling Chinese goods, which, while less expensive, is also of inferior, or unknown, quality.

EQUIPMENT RENTAL COSTS

56. Mr. Dunsworth suggested a ½ ton pick-up truck would provide the same utility as a 40,000-pound gross vehicle weight boom truck (which can be used to carry, and unload, 2,000 pound timbers, using hydraulics). It may have been a few years since Mr. Dunsworth last tried to pick-up a 14" x 14" x 18' timber that weighs 1,700 pounds or so. [A 14" x 14" x 18' timber contains 24.5 cubic feet of creosoted wood that weighs about 70 pounds per cubic foot, or about 1,715 pounds each.] The 4-man crew Mr. Dunsworth suggested (Dunsworth V.S. p.15) could restore the bridge, without the use of a crane or boom truck, would be hard pressed to lift, well, alone carry, or lift onto the caps, 40 pieces of timber that weight 1,700 pounds each. [That is a mere 425 pounds per person. Try lifting that much weight the next time you visit your local gym.] In addition, a ½ ton pick-up truck will carry ½ ton, or 500 pounds. Putting one 1,700 pound timber in the back of a ½ ton pick-up truck would likely result in blown tires, broken springs, broken axle, and a crushed bed. Try explaining that to your local truck-rental facility

57. The primary reason why one would want a boom truck on site, is to transport heavy timbers from where they were stored near the work site, to an area immediately adjacent to the work site. While one could use a track hoe to carry heavy timbers short distances, they are impractical when it comes to moving timbers more than 40 feet or so. Track hoes do not move very fast. In addition, track hoes typically would be used to pick up one piece at a time. If one has to move timbers several hundred feet, it would be more efficient to place a number of them on a boom truck, then move the boom truck. [It should be noted, it would be nearly impossible to place all of the timbers immediately adjacent to the bridge. They would get in the way. The north and south approaches have steep slopes. The road way must be kept clear. There must be room adjacent to the bridge, within which to maneuver a track hoe and a crane. Consequently, the timbers are likely to be placed in an open flat area several hundred feet distant from the bridge. It would be impossible to move heavy timbers with a pick-up truck. A pick-up truck cannot handle the loads. The bed of a pick-up truck is 8 feet or less, whereas the timbers that would be used are 14 to 30 feet long.]

DISCOVERY MATERIALS

58. KCSR, on P. 17 of its Reply, stated Riffin had, prior to Riffin filing his Request for Compensation on March 24, 2008, discovery materials KCSR had sent to Riffin on Friday, March 21, 2008. Riffin actually received the discovery materials on Tuesday, March 25, 2008, the day after he filed his Request for Compensation. Rather than avoiding material KCSR sent to Riffin due to Riffin's discovery request, Riffin has utilized the material, particularly KCSR's photograph KCSR-045. And had KCSR sent Riffin the bridge inspection reports for the other bridges on the Line, as Riffin requested, he would have provided the Board with a copy of those inspection reports. What Riffin strongly objects to, is KCSR not providing Riffin with a copy of the redacted E-mail it provided to the Board in KCSR's Exhibit D. If and when Riffin obtains a copy of the redacted E-mail, he will make appropriate remarks.

COMPENSATION SHOULD BE PAID AT TIME OF SETTLEMENT

59 On p. 27 of its Reply, KCSR argued any compensation it must pay to E&R, should be paid sometime in the future, after E&R have completely restored not only the Line north of the bridge, but the bridge itself. KCSR fails to comprehend the purpose for the compensation, which is to provide E&R with what they bargained for, in exchange for E&R providing KCSR with the Constitutional minimum value of the Line. E&R have offered KCSR the sum of \$504,615, which the Board has determined is the Constitutional minimum value of the Line as of the date KCSR filed its abandonment exemption, in exchange for which E&R demand all of the assets described in KCSR's abandonment exemption. The Board has ordered settlement to occur on or before May 22, 2008. At that time, E&R will tender the full purchase price to KCSR. In exchange for which, E&R will demand KCSR tender to E&R all of the assets associated with the Line, as described in KCSR's abandonment exemption. On May 22, 2008, KCSR may either tender to E&R a restored Glass Road bridge, or offer E&R sufficient capital so that E&R may restore the bridge. If KCSR truly believes the Glass Road bridge can be restored for \$19,277, and truly believes the bridge can be restored in 9 crew days, as stated in Mr. Dunsworth V.S. on p. 16, then perhaps it should consider restoring the bridge. After all, settlement is still 30 days hence, which should be more than enough time, since, according to Mr. Dunsworth, it will only take 9 crew days to restore the bridge.

E & R SHOULD BE REIMBURSED FOR THE COST OF PREPARING THEIR REQUEST FOR COMPENSATION

60. E&R have requested the Board order KCSR reimburse E&R for their costs to prepare their Request for Compensation. Had KCSR preserved the assets associated with the Line as of the date it filed its abandonment exemption, as KCSR was duty bound to do, there would have been no need for E&R to expend the considerable sums it has spent preparing their Request for Compensation. 49 U.S.C. §11704 (b) grants E&R the right to seek damages from KCSR due to an act or omission of that carrier in violation of the ICCTA. KCSR failed to maintain its Line, and failed to preserve the rail assets described in its abandonment exemption. This omission on the part of KCSR, has unlawfully violated E&R's right to purchase all of the assets associated with the Line, as described in KCSR's abandonment exemption. If E&R were to pursue this matter in a U.S. District Court, E&R would be entitled to reasonable attorney's fees as a part of the damages. 49 U.S.C. §11704 (d)(3). At the moment, all E&R is requesting KCSR reimburse, is the cost to restore the Glass Road bridge, and the costs incurred by E&R in preparing their Request for Compensation. If the Board awards E&R the costs of preparing their Request for Compensation, plus the cost to restore the bridge, then they will not seek reasonable attorney fees.

61. In footnote 33 of KCSR's Reply, KCSR indicated E&R had not substantiated their costs to prepare their Request for Compensation. Attached hereto are invoices from:

A. Niemeyer and Associates, which does not include any April, 2008 hours:	\$5,814.44
B. Niemeyer and Associates, April, 2008 hours (12 at \$130).	1,560.00
C. Bobby Carpenter, P.E	2,500.00
D Joe Buckley:	1,000.00
E Document reproduction costs & courier fees:	<u>577.06</u>
TOTAL, COSTS TO PREPARE REQUEST:	\$11,451.50

MISCELLANEOUS

62. Pete Goodman verified statement. As discussed *supra*, Mr. Goodman recollects notes he supposedly made in 2005, but which he failed to provide copies of. Without any contemporaneous corroborative evidence, Mr. Goodman's recollections of the condition of the deck and ballast retaining timbers, is suspect, particular in light of the 2007 photographic evidence depicted in KCSR's photograph No. 14 and photograph KCSR-045.

63 Srikanth Honnur verified statement. In this verified statement, Mr. Honnur merely parrots the mantra that Mr. Dunsworth's conclusions are "well-documented, logically sound and acceptable from an engineering point of view." Riffin would argue Mr. Dunsworth's conclusion are anything but "well-documented, and logically sound." Many of his photographs are seriously out of focus. He provided no vendor quotes for the costs of materials or rental costs of equipment. He seriously underestimates the amount of labor it would take to restore the bridge, presumes herculean strength on the part of his little 4-man crew, totally disregards the applicable FRA regulations, and obviously is not very conversant with evaluating the bearing capacity of piles that have been violently broken. His estimate that the Glass Road bridge could be restored for less than \$20,000, is so low, it is ludicrous.

64. Warren County Board of Supervisors letter. The Board of Supervisors complained "falling debris from the trestle continues to be a problem and a safety hazard to approaching traffic." There was no problem with falling debris prior to Warren County partially demolishing the bridge. If falling debris is a problem, then KCSR should send a crew to the bridge for the purpose of removing any debris that may fall on approaching traffic

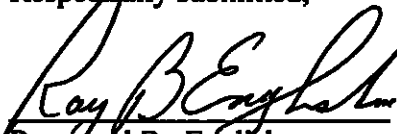
65. On p. 19 of its Reply, KCSR stated KCSR would have replaced the bridge had it desired to provide service south of the bridge Riffin would argue what KCSR would have done is totally irrelevant. It was an asset which E&R had the right to acquire. All available evidence indicates it was in serviceable condition prior to its demolition. In exchange for E&R providing KCSR with the Constitutional minimum value for the Line, E&R are statutorily entitled to acquire all of the Line's assets, as described in KCSR's abandonment exemption. E&R are demanding KCSR keep its part of the bargain. Either provide E&R with a restored Glass Road Bridge, or provide E&R with sufficient capital to restore the bridge

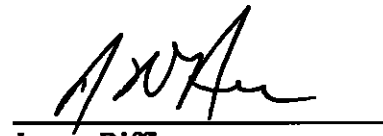
CONCLUSION

66. Mr. Dunsworth's cost savings are attributable to his assumptions that the deck was rotted (and thus KCSR should not be responsible for the cost to restore the deck; which assumption is contra indicated by the photographic evidence of the deck of the Glass Road bridge, and the photographic evidence of the other, older, bridges on the Line); no piles would need to be driven (but Mr. Dunsworth states, three times, that 12 piles probably will need to be driven); a ½ ton pick-up truck would suffice (when it clearly could not handle the loads); no engineer would be required (even though the FRA regulations state otherwise, and even though he proposes to significantly modify the structural components of the bridge); KCSR would be willing to provide sufficient used timbers at no cost (but offers no assurances that KCSR would assume liability if the bridge failed, due to providing structurally deficient timbers), and a 4-man crew could somehow man-handle 1,700 pound timbers without the use of a crane or a boom truck, and could restore the bridge in 9 crew days.

67. E&R will tender the full Constitutional minimum value of the Line on May 22, 2008, at which time E&R will demand KCSR provide to E&R all the assets associated with the Line as of the date KCSR filed its abandonment exemption.

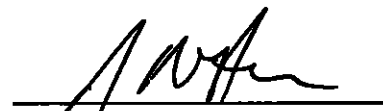
Respectfully submitted,

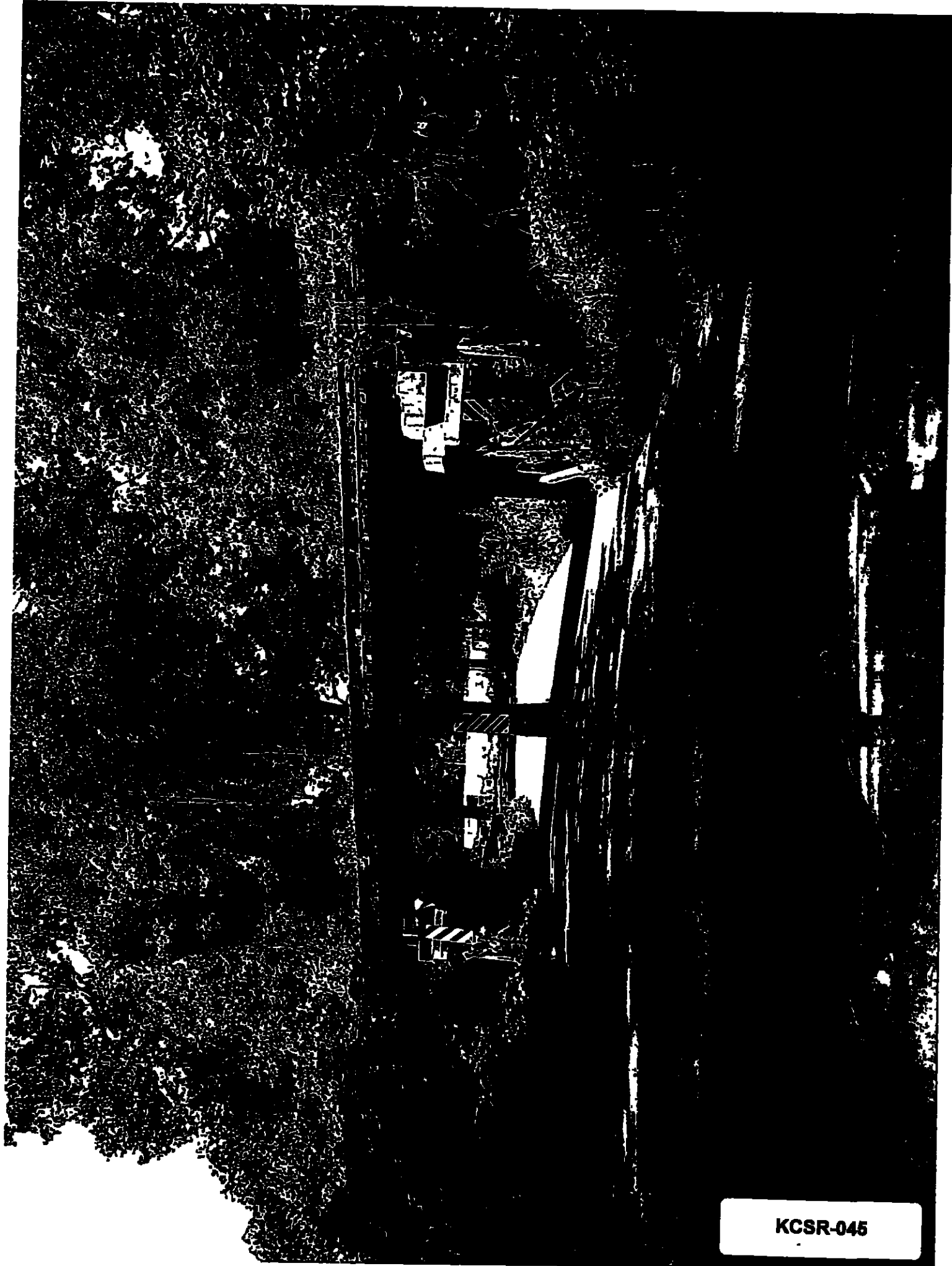

Raymond B. English


James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on this 21th day of April, 2008, a copy of the foregoing Comments Regarding KCSR's Reply to Request for Compensation Due to Increased Costs of Restoring Line to Service Caused By Partial Dismantling of the Glass Road Bridge, was mailed via first class mail, postage prepaid, to **William A. Mullins, Baker & Miller PLLC**, Ste 300, 2401 Pennsylvania Ave, N W , Washington, DC 20037, attorney for Kansas City Southern Railway Company, and to **Craig Richey**, 315 W 3rd Street, Pittsburg, KS 66762, attorney for Vicksburg Southern Railroad, Inc


James Riffin



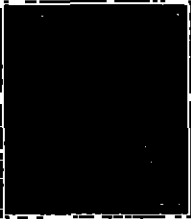
KCSR-045



**Glass Road Bridge – North Approach – Looking South
Showing Trailer, Car Port and Boat Encroaching on Right-of-Way**



**Glass Road Bridge – South Approach – Looking North
Showing Permanent Encroachment 5 Feet From Track**



The BURKE-PARSONS-BOWLBY Corporation

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March 14, 2008

#031408-081MCFU

Niemeyer & Associates
6527 N 165th Street
Omaha, NE 68116
Attn Don Steele

OFF 402-333-2060

E-M donaldsteele1@msn.com

Reference: Inquiry of March 13, 2008

FOB: Vicksburg, Mississippi

Shipping Mode: via truck (375)

Lead Time: Shipment can be made seven to eight weeks after receipt of order

Delivery Schedule: June 2008

Terms: Prices are firm for acceptance until **April 15, 2008** All material is subject to prior sale

Prices subject to adjustment after the expiration date, or if specifications change

All orders are subject to credit approval (terms net 30 days, + 1-1/2% per month thereafter)

Material: Southern Yellow Pine timbers and piling

Grade: #2 and better and DS-65 as noted

Treatment: Creosote, 8# or 12# per cubic foot retention or refusal, per AWP A P2-01 or P3-01

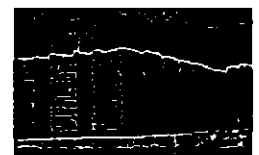
<u>Quantity</u>	<u>Description</u>	<u>Price per unit</u>
38 pieces	8" x 16" x 30' stringers – DS-65, S1S	\$705.00 each
14 pieces	8" x 12" x 20' ballast retainers - #2, S1S to 12"	\$237.00 each
180 pieces	4" x 10" x 16' deck timbers - #2, rough-sawn	\$71.00 each
5 pieces	14" x 14" x 14' caps – DS-65, S1S	\$370.00 each
24 pieces	14" x 50' timber piling (12# creosote)	\$720.00 each

Note: Pricing based on receipt of order for all material.

Thank you for the inquiry!

MIKE COLLINS

Regional Manager Railroad Sales – Western Territory
mcollins@bpbcorp.com



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-103 (Sub- No. 21X)

**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**

VERIFIED STATEMENT OF THEODORE M. NIEMEYER, P.E.

1. My name is Theodore M. Niemeyer, P.E. I am the Principal of Niemeyer & Associates, P C ("N&A"), a railroad and fixed facility engineering firm headquartered in Ringwood, Illinois. I am a registered Professional Engineer in Illinois and Wyoming. Mr. James Riffin retained N&A to estimate the cost to restore the Glass Road bridge, which was partially demolished by a Warren County, Mississippi road crew on or about January 30, 2008. Mr. Riffin also asked our firm to render a professional opinion as to the likely condition of the bridge before it was demolished.

2. I have read the April 14, 2008, Verified Statement of John E. Dunsworth ("V.S. Dunsworth"), which was attached as Exhibit A to the Kansas City Southern Railway Company's ("KCSR") Reply to Request for Compensation Due To Increased Costs Of Restoring Line To Service Cause By Partial Dismantling Of The Glass Road Bridge ("KCSR's Reply").

3. Mr. James Riffin has asked me to render a professional opinion regarding the statements and representations contained in Mr. Dunsworth's Verified Statement.

CONDITION OF THE BRIDGE PRIOR TO ITS DEMOLITION

4. Mr. Dunsworth represented he had spoken with a Mr. Richard Wymans [sic], the road crew supervisor for the Warren County, MS, road crew that partially dismantled the Glass Road Bridge. V.S. Dunsworth at 5. [The road crew supervisor's last name is actually spelled "Winans."] Mr. Dunsworth further represented that Mr. Winans "has advised me that the

ballast decking, ballast retainers, and track ties that had been removed were all badly deteriorated and had been disposed of with the other missing timber materials at Warren County's Jeff Davis landfill." V.S. Dunsworth at 7-8.

5. Since Warren County may be required to reimburse KCSR for the costs to restore the Glass Road bridge, I would carefully scrutinize any statements made by a Warren County employee that would tend to diminish the value of the Glass Road bridge, or the costs to restore the Glass Road bridge. In particular, I would be looking for corroborative evidence that would either support, or contravene, statements made by a Warren County employee

6. The parties in this proceeding have stipulated that the track material on this portion of the Line was removed more than 15 years ago. If this is true, then one would expect that whatever cross ties were on the bridge, would have deteriorated. It should be kept in mind, that the life expectancy of a timber trestle bridge, would be in excess of 50 years. Timber trestle bridges are designed to drain. The upper surface of the deck is constructed with treated wood which is then coated with tar. Gaps are left between wood members, to facilitate drainage. Consequently, the interior of the wood members of a wood trestle bridge have a low moisture content, which prolongs the life of the wood.

7. Since the parties have stipulated the track material on this portion of the Line was removed a number of years ago, the costs to restore the rail that obviously was removed (a Vicksburg Post photograph depicted a Warren County road crew person cutting rail with a torch), and the costs to replace the cross ties that were on the bridge, were not included in the costs to restore the bridge. The condition of the cross ties does not appear to have any relevance, since the costs to replace them was not considered

8. In an April 17, 2008 Verified Statement prepared by Mr. Riffin, he stated he spoke with the same road crew supervisor, and also spoke with the manager of the Jeff Davis landfill. Mr. Riffin indicated the road crew supervisor and the land fill manager described the deck material as "splintered," and "broken." The road crew supervisor also told Mr. Riffin that he would have felt comfortable driving a backhoe over the bridge

9 It appears the road crew used the excavator depicted in the February 7, 2008 Vicksburg Post photograph, to demolish the bridge, much like one would demolish a house. Demolishing a wood structure with a heavy piece of equipment would “splinter” and / or “break” even solid wood into many pieces.

10 As I mentioned in paragraph 5 above, prior to rendering a professional opinion on the likely condition of this bridge before its untimely demolition, one should review all available evidence to develop that opinion. In my case, I carefully scrutinized the photographs taken of the bridge after it was demolished, along with reports by Mr. Buckley and Mr. Carpenter that clearly depict piles and caps in serviceable condition. I scrutinized the reports by Mr. Dunsworth and Mr. Goodman purporting that the bridge was not capable of rail service. I have also reviewed additional photographs and the 1986 inspection report. Mr. Dunsworth, Mr. Carpenter, and Mr. Buckley, all have concluded the remaining timbers could be reused.

11. In KCSR’s Historic and Environmental Report, which was appended to KCSR’s Abandonment Exemption, is a photograph of the deck of the Glass Road bridge. This photograph was taken by a Mr. Bill Meador on July 19, 2007, and was identified as “Photograph No. 14 – M.P. 229.80 over Glass Road, steel I-Beams.” This photograph clearly depicts the ends and undersides of a number of deck boards. With the exception of one deck-board end, the deck boards appear to be in good condition. The tar that was placed on top of the deck boards is also clearly visible.

12. KCSR provided Mr. Riffin with a photograph which was identified as “KCSR-045.” This photograph appears to have been taken at the same time photograph No. 14 was taken (July 19, 2007). This photograph clearly shows the ends of a large number of deck boards, and clearly shows the ballast retaining timbers. All of the deck boards and all of the ballast retaining timbers, appear to be in serviceable condition.

13. Mr. Buckley inspected and took photographs of other timber bridges on the Line. One of these other bridges, near M.P. 225.85, is four years older than the Glass Road bridge, is quite similar to the Glass Road bridge, and is presently being utilized. Mr. Buckley described this bridge as being in excellent condition.

14. Mr Buckley inspected and took photographs of two other timber bridges on the Line. These two other bridges are 15+ years older than the Glass Road bridge, and are of similar construction. Mr Buckley described these two bridges as being in good condition

15. A number of Mr Buckley's photographs depict the underside and ends of the deck boards, and the ballast retaining timbers. The deck boards and ballast retaining timbers all appear to be in good condition, which substantiates Mr. Buckley's opinion regarding the condition of these other, older bridges.

16. Included in Mr Dunsworth's V.S was an Illinois Central Gulf Railroad bridge inspection report, prepared by John C. McGregor (last name spelling may be inaccurate), for the Glass Road bridge, dated June 24, 1986. Prior to preparing this Verified Statement, I spoke with Donald Lewis, the former Manager of Bridge Structures for the Canadian National (Illinois Central Gulf) Railroad. During my 30-minute conversation with Mr. Lewis, he informed me that Mr. McGregor's first name was John (The inspection report only says "J C McGregor.") In 1986, Mr. Lewis was the individual who reviewed bridge inspection reports and made recommendations for repairs Mr Lewis explained to me what the various entries on the inspection report signified The first column is headed by "SG," which stands for Segment. The Glass Road bridge had three segments: The north approach segment, consisted of 3 bents of 6 piles each (see the "NO BENT" and "P" columns) Segment 2 is the substructure supporting the steel beams. Segment 3 was the center of the bridge, which was built with steel beams The south approach segment also consisted of 3 bents of 6 piles each. The "STRING" column says each bent had 10 pieces of 7" x 16" timbers ("A" is referenced in the "Stringer Codes" section of the report at the bottom of the form.) The "Cap" column indicates the caps were 14" x 14" x 14'. Of greatest significance, is the last column, which has "CR" at the top of the column. CR stands for "Condition Report." The letter "G" indicates the condition is "good." It should be noted, all segments were identified as being in "good" condition.

17. During my conversation with Mr. Lewis, he indicated the Illinois Central Gulf Railroad Company's specifications for a wood trestle bridge, called for one-inch spacers to be inserted between the ballast retaining timbers and the deck. This gap under the ballast retaining timbers

permitted water to flow off of the deck.

18 In reaching his conclusion that the deck and ballast retaining timbers were rotted, it would appear Mr. Dunsworth did not review any of the available evidence that suggests the ballast decking and ballast retainers were in very serviceable condition. It would appear Mr. Dunsworth merely relied upon the Warren County road crew supervisor's unsubstantiated, self-serving remarks, coupled with the age of the bridge and the fact that the bridge had not been used or maintained for the past 15 years. What I found to be interesting, was the fact that KCSR was able to find the bridge inspection report for the Glass Road bridge, but failed to provide the bridge inspection reports for the other bridges on the Line. When Mr. McGregor inspected the Glass Road bridge in 1986, he would have inspected, and filed inspection reports, for all of the bridges on the Line.

19. The last sentence of paragraph one, on page 15 of KCSR's Reply, reads as follows:

"This report [June 24, 1986 Glass Road bridge inspection report] does not indicate that the Bridge was in operating condition and implies the Bridge was in need of maintenance."

20. As was discussed in paragraph 15 above, this statement by KCSR is directly contradicted by the June 24, 1986 Glass Road bridge inspection report, which clearly and unequivocally indicated all portions of the bridge were in "good" condition. This statement is also unsupported by Mr. Dunsworth's V.S. The only required maintenance from Mr. McGregor's inspection report is "fill behind So. headwall."

21. KCSR (but not Mr. Dunsworth) made reference to a September 20, 2005 E-mail from Pete Goodman, KCSR's Director of Bridge Maintenance, to Allen Pepper. In this E-mail, Mr. Goodman stated: "The beam span is too light for us to use anywhere in the track." In a February 25, 2008 E-mail from Mr. Goodman (which was sent after the Glass Road bridge had been demolished), Mr. Goodman opined: "The only thing worth anything with the bridge is the scrap cost of the beams. The substructure was timber and not in very good shape."

22 Mr Goodman's 2008 statement that the substructure was "not in very good shape," is contradicted by the inspections and photographic evidence in the record, particularly KCSR's photograph No. 14, KCSR's photograph KCSR-045, Mr. Buckley's inspection, Mr. Carpenter's photographs and inspections and Mr. Dunsworth's testimony.

23. Mr. Dunsworth, based on his conversation with the Warren County road crew supervisor, and his observation of vegetative growth in the photographs of the bridge prior to its destruction, concluded the ballast on the bridge was badly fouled. Fouled ballast is not unusual, and would not render a bridge unserviceable per se. Since the bridge was destroyed, the existing ballast was lost, and now must be replaced.

24. After considering all of the corroborative evidence, I concluded the Glass Road bridge in all likelihood was in serviceable condition prior to its partial demolition. After reviewing Mr Dunsworth's photographs, and after reviewing all of the corroborative evidence a second time, it is still my professional opinion that the Glass Road bridge was in serviceable condition prior to its partial demolition.

NEED FOR ENGINEERING SERVICES

25. Mr. Dunsworth, on page 12 of his V.S., made the following statement.

"I am at a loss to explain why Mr Streele has included an engineering input here. As a general matter, engineering costs are only required in connection with the installation of a new bridge, not an existing one. The fact that part of the Glass Road Bridge has been partially dismantled does not warrant or require incurring the cost of hiring an engineer, and this would be so even if the Bridge were to be somewhat re-configured, as I have proposed. All that is required here would be the measurement of timber components and the use of a builder's level for the piling elevations, and these do not require the services of an engineer."

26. The Federal Railroad Administration ("FRA") has published its Statement of Agency Policy on the Safety of Railroad Bridges in Appendix C to 49 CFR Part 213. On September 11, 2007, the FRA issued its Safety Advisory 2007-3, which reiterated the FRA's policy that railroad bridges subjected to unusual impacts should be inspected by a qualified railroad bridge inspector

(such as Mr. Dunsworth, Mr. Steele or Mr. Buckley), then evaluated by a qualified railroad bridge engineer (who should be a licensed professional). Pertinent portions of Appendix C are quoted below

“2. Capacity of Railroad Bridges (a) Determination. The safe capacity of bridges should be determined by competent engineers using accepted principles of structural design and analysis.

(c) Rating The factors which were used for the design of a bridge can generally be used to determine and rate the load capacity of a bridge provided:

(i) The condition of the bridge has not changed significantly. (Emphasis added)

“9 Special Inspections of Railroad Bridges. (a) A special bridge inspection should be performed after an occurrence that might have reduced the capacity of the bridge, such as ... an unusual impact ”

“11. Railroad Bridge Inspectors and Engineers. (a) Bridge inspections should be performed by technicians whose training and experience enable them to detect and record indications of distress on a bridge. Inspectors should provide accurate measurements and other information about the condition of the bridge in enough detail so that an engineer can make a proper evaluation of the safety of the bridge.

(b) Accurate information about the condition of a bridge should be evaluated by an engineer who is competent to determine the capacity of the bridge. (Emphasis added.)

“13 Special Considerations for Railroad Bridges Railroad bridges differ from other types of bridges in the types of loads they carry, in their modes of failure and indications of distress, and in their construction details and components. Proper inspection and analysis of railroad bridges require familiarity with the loads, details and indications of distress that are unique to this class of structure. Particular care should be taken that modifications to railroad bridges, ... are suitable for the structure to which they are to be applied. Modifications should not adversely affect the serviceability of the bridge nor its accessibility for periodic or special inspection. (Emphasis added)

27. The Glass Road bridge was subjected to “unusual impacts.” [It was violently demolished using heavy demolition equipment. A large number of piles were broken by subjecting the piles to destructive lateral forces.] The FRA’s Statement of Policy states that when a railroad bridge has been subjected to “unusual impacts,” it needs to be “evaluated by an engineer.”

FRAMED BENT CONSTRUCTION

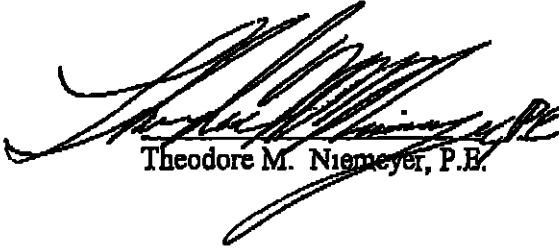
28 Mr. Dunsworth suggested the Glass Road bridge could / should be rebuilt using “framed bent construction,” rather than re-driving piles to replace the piles that were broken off. Paragraph 13 of Appendix C of 49 CFR 213, states **“Particular care should be taken that modifications to railroad bridges, ... are suitable for the structure to which they are to be applied. Modifications should not adversely affect the serviceability of the bridge nor its accessibility for periodic or special inspection.”** Mr. Dunsworth’s framed bent construction, would be a significant “modification.” In addition, the point at which the framed bents would be placed onto the existing broken-off piles, would be below grade, and thus would “adversely affect ... its accessibility for periodic ... inspection.”

29. When the piles were broken off, the structural integrity of the piles was compromised for several feet below grade. [Inspection of the piles would / did show the piles were splintered] For framed bent construction, the earth adjacent to the broken-off piles would have to be excavated to a depth below the deepest crack of the most damaged pile. All of the piles in that bent would have to be cut off at this depth. The framed bent then would be built on top of the remaining portion of the broken-off pile. Framed bent construction could adversely affect the bearing capacity of the pile. [The majority of a pile’s load carrying capacity is developed due to the friction between the surface of the pile and the adjacent earth If one removes the earth adjacent to a pile, then that earth is no longer available to provide support for the pile (even when the earth is placed back into the hole) Consequently, excavating below the existing grade, could diminish the load carrying capacity of the broken-off piles. Given that the piles were broken off, rather than cut off, splinter-cracks in the piles would be expected below grade. Removing this supporting earth, could diminish the load carrying capacity of the broken-off piles.

30 It should be pointed out that the piles in bents 2 and 3 may have been disturbed during the demolition of the bridge, and should be evaluated to determine whether they still have sufficient bearing capacity. The cost for this evaluation **was not included** in the cost estimate prepared by Mr. Steele. Rather than trying to evaluate the bearing capacity of the remaining piles, Mr. Steele elected to replace the piles.

VERIFICATION

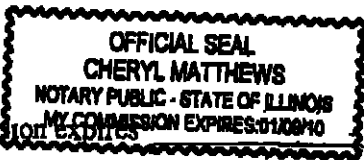
I, Theodore M Niemeyer, P E., hereby verify under the penalty of perjury, that I am qualified and authorized to submit this Verified Statement and that all of the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief


Theodore M. Niemeyer, P.E. April 21, 2008
Date

STATE OF ILLINOIS, McHENRY COUNTY, to wit:

I HEREBY CERTIFY, that on this 21 day of April, 2008, before me, a Notary Public of said State, personally appeared Theodore M. Niemeyer, P.E., known to me or satisfactorily proven to be the person whose name is subscribed to the within Verified Statement, and who acknowledged that he executed the same, for the purposes therein contained.

AS WITNESS my hand and notarial seal.

My commission expires



Notary Public

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-103 (Sub- No. 21X)

**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**

APRIL 17, 2008 VERIFIED STATEMENT OF JAMES RIFFIN

1. My name is James Riffin. I am over the age of 18, and I am competent to testify regarding the matters in this Affidavit

2. On or about February 12, 2008, I spoke with Richard Winans, the Warren County roads supervisor. His telephone number is 601-636,1431. During this conversation, Mr Winans made the following statements:

- A. The majority of the cross ties on the Glass Road bridge were rotted.
- B. The deck splintered when it was demolished.
- C The piles on the south approach to the bridge, were broken off
- D. The timber material removed from the Glass Road bridge was taken to the Jeff Davis landfill.

3. In an effort to determine whether the bridge's deck was capable of supporting a load, I asked Mr. Winans if he would have felt comfortable driving across the bridge deck with a backhoe. Mr. Winans replied he felt the deck would have supported a backhoe.

4. Shortly after the Glass Road bridge was demolished, I spoke with the Jeff Davis landfill operator His telephone number is (601) 636-7576. I asked if any of the wood from the Glass Road bridge was available for inspection. He replied the wood had already been buried. When I asked him what condition the wood was in, he replied, it was splintered and broken.

VERIFICATION

I, James Riffin, hereby verify under the penalty of perjury, that I am qualified and authorized to submit this Verified Statement and that all of the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief.

James Riffin
James Riffin

4/17/08
Date

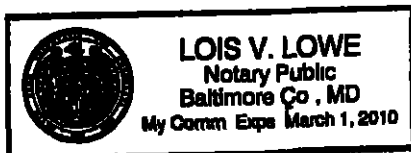
STATE OF MARYLAND, BALTIMORE COUNTY, to wit

I HEREBY CERTIFY, that on this *17th* day of April, 2008, before me, a Notary Public of said State, personally appeared James Riffin, known to me or satisfactorily proven to be the person whose name is subscribed to the within Verified Statement, and who acknowledged that he executed the same, for the purposes therein contained.

AS WITNESS my hand and notarial seal.

My commission expires. _____

Lois V. Lowe
Notary Public



CARPENTER ENGINEERING, INC.

100 Pear Orchard Drive, Suite D
Vicksburg, MS 39180
Email ceinc@bellsouth.net

Phone 601-631-0470
Fax 601-634-6960
Cell 601-831-4859

April 16, 2008

Mr Ray English
Foam Packaging, Inc
P O Box 1075
Vicksburg, MS 39181

Dear Mr English

An existing railroad bridge crossing Glass Road in Warren County, Mississippi was partially demolished earlier this year. It has been proposed that this railroad bridge be rebuilt using used wooden structural members obtained from other dismantled railroad bridges.

Carpenter Engineering, Inc. would not be able to accurately evaluate the structural integrity of used wood structural members. Therefore, Carpenter Engineering, Inc. would not be able to determine and certify that a bridge reconstructed with used wood structural members would be structural sound and safe, and meet basic professional engineering and construction standard requirements.

Should you have any questions concerning this information, please do not hesitate to contact me at 601-631-0470

Sincerely,



Bobby G Carpenter, P E
President, Carpenter Engineering, Inc
Mississippi Engineering License No 8252



Niemeyer & Associates, P.C.

4415 Beck Lane
Ringwood, IL 60072-9688
(815) 653-9400
Fax: (815) 728-0220

Invoice

Bill To
JIM RIFFIN 1941 Greenspring Drive Timonium MD 21093

Date	Invoice #
3/4/2008	513-1

Project/ Location		Service Date(s)	Terms	Due Date
Mississippi		February 2008	Net 30	4/3/2008
N&A Associate	Description	Qty	Rate	Amount
	Supply value of bridge for Jim Riffin of English/Riffin			
Ted Niemeyer	Chief Engineer - Hours - February	6	130.00	780.00
Ted Niemeyer	Chief Engineer - Hours - March	17.5	130.00	2,275.00
Don Steele	Engineer - Hours - February	8	100.00	800.00
	Engineer - hours - March	16	100.00	1,600.00
Connie Mueller	Administrative Assistant - hours - February	2	45.00	90.00
Connie Mueller	Administrative Assistant - hours - March	5	45.00	225.00
N&A Office	UPS Shipping from N&A	20.44	1.00	20.44
N&A Office	UPS Shipping from Don Steele	24	1.00	24.00
	Customer upfront deposit for services		-1,500.00	-1,500.00
Total				+ 1500 - \$4,314.44 <u>\$5814.44</u>

Copies of service/expense reports and expense documentation enclosed herewith. If you need any additional information please do not hesitate to contact N&A.

INVOICE No. 20533

Carpenter Engineering, Inc

P.O. Box 821662

Vicksburg, MS 39182-1662

Phone 601-631-0470

Fax 601-634-6960

Tax I.D. No 64-0703383

Cell Phone 601-831-4859

Email ccinc@bellsouth.net

<http://www.carpenterengr.com>

April 16, 2008

Customer. Foam Packaging, Inc.

P.O. Box 1075

Vicksburg, MS 39181

SERVICES

The following engineering services were provided (through 4/16/2008).

1. Performance of onsite inspections of a partially demolished railroad bridge on Glass Road, Warren County, Mississippi on February 19, 2008, February 26, 2008, April 11, 2008, and April 15, 2008 for the purpose of taking photographs of existing conditions, and collecting information
- 2 Provision of photographs and information related to the Glass Road bridge to Mr James Riffin and other professionals (e g , Niemeyer and Associates, Inc.)

1 Civil/Environmental Engineer (25 hrs X \$100/hr) -	\$	2,500.00
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Thank You for Your Business

Terms: Total Net Balance Due 30 days from Invoice Date

INVOICE

**2/28/08: Drive to Vicksburg, MS; Inspect and photograph
4 railroad bridges on Vicksburg Industrial Lead,
Prepare verified statement;
Develop, print and mail photographs to James Riffin** **\$1,000.00**

**Please remit payment to: Joe Buckley
1847 Buckley Road
Hickory, MS 39332**

 DOCU PRINT IMAGING, INC.
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March 3, 2008.	36 ea. 8x10 color at \$1.15 ea	41 40
	20 ea 11x17 color at \$2.60 ea	52.00
	Scan & e-mail 5 ea 11x17 color at \$5 00 ea	25.00
	Bridge photographs	
March 7, 2008	28 ea 8.5 x 11 B/W at 0.11 ea.	3.08
	Discovery	
March 21, 2008	390 ea 8.5 x 11 B/W at 0.11 ea:	42 90
	60 ea 8 x 10 color at \$1.15 ea	69.00
	Request for compensation	
March 24, 2008	Hand delivery to Wash D.C.:	100.00
	Request for compensation	
April 10, 2008:	45 ea 8.5 x 11 B/W at 0.11 ea:	4.95
	DHL to Wash D.C.	5.56
	Supplement to request for compensation	
April 22, 2008	600 ea 8.5 x 11 B/W at 0.11 ea:	66.00
	30 ea 8 x 10 color at \$1 15 ea	34.50
	Hand delivery to Wash D.C.:	<u>100.00</u>
	Comments	
	Sub-total	544.39
	6% Tax:	<u>32 67</u>
	TOTAL:	\$577.06

INNER HARBOR
4 East Baltimore Street
Baltimore, Maryland 21202
410-539-3127 Fax 410-727-5434

PIKESVILLE
516 Reisterstown Road
Baltimore, Maryland 21208
410-653-2255 Fax 410-653-6348

TIMONIUM
1941 Greenspring Drive
Timonium, Maryland 21093
410-561-4446 Fax 410-561-3875