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March 8, 2007

BY FED EX

Attn: Secretary
Surface Transportation Board
1925 "K" Street NW
Suite 700
Washington, DC 20423

Re: Savannah Port Terminal Railroad, Inc. -- Petition for Declaratory Order
Docket No. FD34920

Dear Secretary:

On November 30, 2006, we filed on behalf of Capital Cargo, Inc. a Motion to Dismiss the Petition for Declaratory Order of Savannah Port Terminal Railroad, Inc. in the above-captioned matter, along with Exhibits A through D. I spoke with your office that day about the filing, and received the attached e-mail acknowledgement. The motion was the only filing that we submitted on November 30, which confirms that the acknowledgement refers to the motion.

Savannah Port Terminal Railroad received its copy of the motion to by Fed Ex and filed its response to the Motion to Dismiss with the Board on February 1, 2007. (SPTR's filing followed several filings relating to an extension of time.)

Upon review of the docket sheet on the Surface Transportation Board's website today, and a telephone call to your office we have discovered our motion was not actually received or docketed on November 30, 2006. It is unclear why this problem occurred, given that we have successfully filed other documents through the STB's E-filing system.

In any event, please find for filing Capital Cargo's Motion to Dismiss along with Exhibits A through D. In addition, we would appreciate any advice regarding how we may ensure that future electronic filings are docketed.

ENTERED
Office of Proceedings
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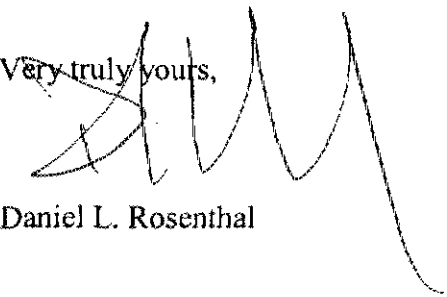
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TRANSPORTATION BOARD

March 8, 2007
Page 2

Please feel free to contact me if you require any further explanation of this matter.

Very truly yours,



Daniel L. Rosenthal

DLR:sms
Enclosures

cc: P. Campbell Ford, Esq.
Thomas Mahoney, III, Esq.
Ronald C. Berry, Esq.
James T. Kilbreth, Esq.

From: <SAdvisory@stb.dot.gov>
To: <drosenthal@verrilldana.com>
Date: Thu, Nov 30, 2006 3:40 PM
Subject: Acknowledgement of formal filing

STB acknowledges that you have submitted a formal filing regarding docket number FD-34920--

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

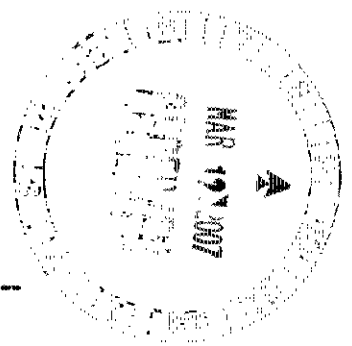
DOCKET NO. FD34920

**SAVANNAH PORT TERMINAL RAILROAD, INC. --
PETITION FOR DECLARATORY ORDER**

**MOTION OF RESPONDENT CAPITAL CARGO, INC.
TO DISMISS**

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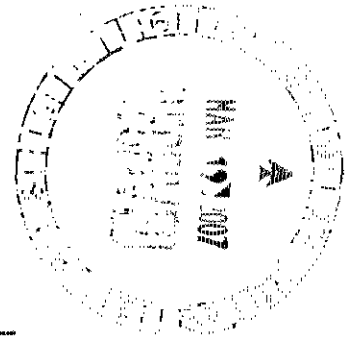


**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD34920

**SAVANNAH PORT TERMINAL RAILROAD, INC. —
PETITION FOR DECLARATORY ORDER**

**MOTION OF RESPONDENT CAPITAL CARGO, INC.
TO DISMISS**



Pursuant to 49 C.F.R. § 1111.5, Respondent Capital Cargo, Inc. ("Capital Cargo") hereby moves to dismiss the petition for declaratory order (the "Petition") filed by Petitioner Savannah Port Terminal Railroad, Inc. ("SPTR"), and discontinue this proceeding. The grounds for this motion are the following:

(1) The transportation and service at issue in this case are the subject of a contract between Capital Cargo and SPTR, which extends to and includes the topic of demurrage as raised in the Petition. Both SPTR's claim for demurrage and Capital Cargo's claim for failure to provide service revolve around the same factual core, *i.e.*, the contractual obligation of SPTR to provide three deliveries per day of three cars each to Capital Cargo's facility at the Garden City Terminal in Garden City, Georgia. SPTR essentially concedes that if there is a contract under which three deliveries per day are required, then demurrage cannot be charged where it arises from failure to make those required deliveries. Accordingly, this case is outside the jurisdiction of the Surface Transportation Board (the "STB") pursuant to 49 U.S.C. § 10709, the Petition must be dismissed, and this proceeding must be discontinued;

(2) SPTR's contention that Capital Cargo waived its objections to most of the demurrage charges at issue in this case is incorrect. The parties' contract contained no written-objection

requirement -- in fact, the contract expressly provides that a failure to object does not constitute a waiver. Even if such a requirement existed, however, which it does not, SPTR waived it by negotiating the demurrage charges with Capital Cargo following the expiration of the written-objection period, and also by allowing others to object verbally to such charges. Moreover, SPTR's argument is misplaced because demurrage was a function of the parties' contract, and the extraordinary judicial rule barring waiver of a written-objection requirement is both inapplicable to contract service and reflective of outmoded and extinct railroad law and policy; and

(3) Finally, the petition should be dismissed as to all cars containing pulpboard, scrap or waste paper and ground strand board -- the overwhelming majority of shipments -- because those commodities appear to be exempt from subtitle IV of Title 49 pursuant to 49 U.S.C. § 1039.11(a) and 49 U.S.C. § 10502.¹

FACTUAL BACKGROUND

Capital Cargo is engaged in the business of receiving cargo² on box cars, unloading the cars and loading the cargo onto trucks for eventual transport to export markets. (Ex. O³ at 37-38, 40-41.) As relevant to this case, Capital Cargo does business from a facility within the Garden City Terminal, pursuant to a Second Amendment to Lease Agreement with the Georgia Ports Authority ("GPA"), dated December 10, 1995. (Exhibit K.) Capital Cargo took over that facility following the bankruptcy of the original lessee. (Ex. I; Ex. O at 29.)

¹ Subtitle IV is titled "Interstate Transportation," and contains the statutory provisions at issue in this case.

² The cargo consists of the commodities listed on the various invoices attached as Exhibit P to SPTR's Petition -- primarily pulpboard.

³ Unless otherwise specified, all referenced exhibits are exhibits to SPTR's Petition.

Capital Cargo's Facility and the Lease with GPA

At all relevant times, the facility has contained a track capable of holding three rail cars at any one time. (Ex. O at 55-56.) In its negotiations with GPA regarding the possibility of taking over the facility from its bankrupt owner, Capital Cargo raised the fact that in order for Capital Cargo to operate the facility profitably, it would need to be able to unload nine cars per day -- *i.e.*, it would be necessary to receive three switches per day (three pickups and deliveries per day of three cars each). (Ex. O at 27-31, 68; Affidavit of Kenneth J. Meyer, ¶ 2.)⁴ Otherwise, the rent paid to GPA would be exorbitant and cost-prohibitive. (*Id.*) Representatives of GPA, along with the manager of the Savannah State Docks Railroad,⁵ assured Capital Cargo that it would receive at least three switches per day. (Ex. O at 27-29, 31, 68-70; Meyer Affidavit at ¶ 2.) Accordingly, Capital Cargo signed an amendment to the Lease, effective December 10, 1995, essentially replacing the bankrupt predecessor as lessee. (Ex. K.)

Against this backdrop, the Lease states that "Lessor [GPA] agrees to provide rail service to the Premises as long as the present rail access is maintained by Lessee [Capital Cargo]."⁶ (Ex. I at Article 3.) The Lease also states, "Failure of Lessor or Lessee to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder." (Ex. I at Article 18.) The

⁴ Kenneth Meyer is the principal of Capital Cargo. His Affidavit was attached as Exhibit F to Capital Cargo's Supplemental Brief in Opposition to SPTR's Motion to Stay and Transfer in the Georgia Superior Court. A copy of the Affidavit is attached hereto at Tab A.

⁵ Savannah State Docks Railroad was the railroad that GPA owned and operated within the Port. (Ex. L to SPTR Petition at 113.)

⁶ William Vinson, the operational auditor of GPA, was GPA's 30(b)(6) deponent. He stated that specific conversations in the course of negotiations between Capital Cargo's principal Mr. Meyer and a GPA representative, in which specific numbers of rail deliveries were discussed, would make a difference regarding his consideration of GPA's obligations under the Lease. (Transcript of Deposition of Georgia Ports Authority, copy attached hereto at Tab B, at 10.)

lease "and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of Georgia" (Ex. I at Article 24.)

Following execution of the Lease, Capital Cargo and GPA embarked for several years on a practice under which GPA, true to its word, almost always provided three (or more) deliveries per day of three cars each. (Ex. O at 29, 32; Meyer Affidavit at ¶ 3.) Under this implementation of the Lease, the practice was that Capital Cargo had forty-eight hours to unload rail cars once the cars were actually on Capital Cargo's track. (Ex. O at 14, 26.) If a car could be unloaded on the first day, Capital Cargo would receive a credit; if a car could not be unloaded until more than forty-eight hours after Capital Cargo had it, then demurrage could be charged. (*Id.*)

Critically, as long as the three switches per day were being provided by SPTR and the cars were being worked timely by Capital Cargo, demurrage would not accrue. (Ex. O at 26.) Rather, the forty-eight hour time period would not include time when GPA had a car but the car had not yet reached Capital Cargo's track -- unless there were an unusual backup arising from unexpected influx of cars or an untimely turnover by Capital Cargo. (*Id.* at 26, 36-37.) Capital Cargo's principal, Mr. Meyer, explained in his deposition that for ten and a half years,

[t]hey would get us cars for the first thing in the morning either the night before, we would work then. As we opened the door and start working the door of the second car we send that notification of we'll be ready at this time, please pull and redeliver the next three cars, the next three oldest cars, so there was always pretty much a standing order that two hours after you drop off, we're going to be ready and if we need to work late a little bit we work late. We've stayed late working on waiting drills that never ever materialized so we were flexible enough to want to work around because the nine cars a day is such an important number."

(Ex. O at 71-72.)

The Easement Agreement

GPA decided to privatize rail service within the Terminal, and on June 1, 1998 SPTR signed an Easement Agreement with GPA to take over GPA's service obligations.⁷ (Ex. L.)

That agreement states, *inter alia*:

- "Beginning on the commencement date and for as long thereafter as this Agreement remains in effect, SPTRR shall bear full common carrier responsibility for the provision of rail transportation services on the Premises in accordance with applicable tariffs, *contracts* and laws." (Ex. L at ¶ 5 (emphasis added).)
- "Initially, said rail transportation services shall be performed by SPTR in accordance with GPA's existing Tariff as shown on Exhibit 'C' and attached hereto and by reference made a part hereof, *and contracts and other agreements with its users and with other carriers, which SPTRR hereby agrees to adopt and/or assume*. Subject to any limitations set forth in such contracts or as may have been or may be prescribed by the STB, SPTRR thereafter may modify or cancel any such Tariff or agreement in such lawful manner as it deems appropriate." (*Id.* at ¶ 6 (emphasis added).)
- "SPTRR shall provide efficient and economical railroad transportation services, including service to customers along the Tracks . . . commensurate with the reasonable needs and requests of GPA and its customers. . . . SPTRR agrees to cooperate with GPA to ensure that adequate rail service, at competitive costs, is at all times furnished to users of the Premises" (*Id.* at ¶ 8(b).)

Notably, and contrary to SPTR's argument to the Georgia Superior Court in seeking to have this case referred to the STB, the Easement Agreement does not call for the STB to have jurisdiction over disputes thereunder. Rather, the only references to the STB in the Agreement are as follows:

- The Agreement states in a prefatory clause that SPTR "is seeking authorization to do business as a class III common carrier by railroad subject to the jurisdiction of the Surface Transportation Board . . ." (Ex. L at 1);

⁷ Mr. Meyer testified that he did not know this until he noticed that the railroad's engines had been painted a different color, and he read about it in a newspaper article. (Ex. O at 22-23; Meyer Affidavit at ¶ 4.)

- “STB” is a defined term (*Id.* at ¶ 1(k));
- The Agreement references the need to seek STB approval for SPTR to be replaced as a carrier; (*Id.* at ¶ 3);
- The Agreement states that SPTR may modify or cancel the contracts that it agreed to assume, “[s]ubject to any limitations set forth in such contracts or as may have been or may be prescribed by the STB” (*Id.* at ¶ 6.)

It is inconceivable that parties intending somehow to cede to the STB jurisdiction over their contracts -- assuming *arguendo* that such a course of action is even possible under 49 U.S.C. § 10709 -- would choose to do so in such a vague fashion, all the while expressly referencing and carrying forward contractual obligations that, as set forth below, are outside the jurisdiction of the STB.

In entering the Easement Agreement, GPA intended for SPTR simply to pick up where GPA was leaving off in terms of providing service. (Transcript of Deposition of Georgia Ports Authority, copy attached hereto at Tab B, at 39-41.) In the words of William Vinson, GPA’s operational auditor and 30(b)(6) representative,

I believe this documentation was actually in the request for proposals that they would agree to continue to provide the same level of service as were in place and we were committed to do at that time.

(*Id.*) GPA did *not* intend there to be any reduction in service. (*Id.*) GPA considers specific levels of service in place prior to the Easement Agreement to be enforceable obligations against SPTR under that Agreement. (*Id.* at 41-42.)

Problems with SPTR’s Performance

SPTR generally performed under the Lease in the same manner as GPA -- until the summer of 2004, nearly ten years after Capital Cargo started working with GPA. (Meyer Affidavit at ¶¶ 4, 8.) At that point, SPTR began providing fewer than three deliveries per day -- and also began charging demurrage arising from the backup of cars that flowed from the reduced

deliveries. (Meyer Affidavit, ¶¶ 4-5.) Capital Cargo complained to William Vinson at GPA, who helped resolve the problem with SPTR. (*Id.*)

However, the problem arose again in the first part of 2005. (Ex. O at 42; Meyer Affidavit at ¶ 8.) While Capital Cargo paid demurrage charges eight to ten times prior to 2005, totaling a few thousand dollars, between January and May 2005 SPTR charged approximately \$149,000.00 in demurrage. (*Id.* at 16, 42; Ex. C at ¶ 12; Meyer Affidavit at ¶ 7.) Other than approximately \$4,000.00 in charges arising from an unexpected and unannounced delivery of thirty to thirty-five cars over five or six days, all of the demurrage charges represented cars backed up due to SPTR's failure to provide three switches per day. (Ex. O at 85-91; Meyer Affidavit at ¶ 7.) The basic problem was and remains SPTR's insistence that it is obligated to provide only one delivery of cars per day, and that if more than three cars per day arrive at the Terminal, then the forty-eight hour "free time" clock begins ticking immediately without regard to SPTR's failure or refusal to make three switches per day, and without regard to the fact that Capital Cargo does not yet have the cars on its track. (Ex. R at 59-60.) SPTR eventually refused to provide any service at all to Capital Cargo until and unless demurrage charges were paid. (Ex. G at 14; Meyer Affidavit at ¶ 8; SPTR Petition at ¶ 51.)

In that same timeframe, SPTR also attempted to impose on Capital Cargo the terms of a new tariff that purportedly limited and restricted Capital Cargo's right to object to demurrage on both procedural and substantive grounds -- most importantly for purposes of this case, that Capital Cargo must object to demurrage charges in writing within fifteen days "following the month in which the bill was issued . . ." or else be liable for such charges. (Ex. M at ¶¶ 6-8 and Ex. 3 thereto at Item 809; Ex. N.) The new tariff was the first one that Capital Cargo had ever seen or known about. (Ex. O at 12, 18.) Mr. Meyer was not told about or given any previous

tariff by SPTR, GPA or Savannah State Docks Railroad, and did not know of or see any such tariff until it was shown to him in the course of this litigation. (*Id.*; *see also id.* at 21-22.)

As set forth above, the Easement Agreement in numerous separate provisions references preexisting contracts with GPA's tenants -- and indeed, SPTR "agrees to adopt and/or assume" such contracts. (Ex. L at ¶¶ 5-6.) Nevertheless, SPTR's 30(b)(6) representative professed ignorance of the terms of SPTR's own Easement Agreement, testifying that:

- "[The Lease is] a private contract, I wouldn't expect that we would have a copy of it." (Ex. R at 64-66.)
- "The agreement [Capital Cargo] has with GPA does not effect how we do our business," and has nothing to do with SPTR or Rail Link. (*Id.* at 65-66.)
- "GPA did not make us aware, one way or the other of any agreements that they have with their tenants." (*Id.* at 66.)
- SPTR has an obligation under the Easement Agreement to provide rail service to all tenants of the port -- but the Agreement does not include the Lease between GPA and Capital Cargo. (*Id.* at 67-68.)
- Other than the Easement Agreement, nothing else addresses service to Capital Cargo. (*Id.* at 68.)

While professing ignorance over the contract that it assumed with Capital Cargo,⁸ SPTR simultaneously claims the right -- indeed, the obligation! -- to enforce unilaterally-declared written-objection requirements, while also declining to enforce those agreements against others. Indeed, GPA, which is a customer of SPTR, simply objects verbally to -- and is allowed by

⁸ At the same time, SPTR tries to distract the STB's attention from the real issue in this case by blaming Capital Cargo for the fact that the track it leases only holds three rail cars. (SPTR Petition, *seriatim.*) However, the track has been the same size at all relevant times, *i.e.*, when Capital Cargo negotiated with GPA; when the amended Lease was signed; when SPTR voluntarily signed the Easement Agreement picking up the Lease obligations; and when SPTR stopped providing three switches per day. The three-switch-per-day agreement was specifically reached *because of* the size of the track, and SPTR cannot rightfully complain about that agreement now.

SPTR not to pay -- demurrage charges arising from SPTR's failure to deliver cars timely.⁹ (GPA Dep. Tr., Tab B hereto, at 28-29, 44, 52-54, 57.) In addition, SPTR has already confirmed its disinclination to require strict conformity, by sending several representatives to Capital Cargo's office in March 2005 to discuss the demurrage charges -- notwithstanding the fact that no written objection had then been made to some of the charges.¹⁰ (Ex. O at 19-21; Meyer Affidavit at ¶ 8) SPTR and Rail Link would not have entered any such discussions without the intent to negotiate in good faith -- regardless of any supposed inability on SPTR's part to reduce the demurrage charges. (Ex. R at 85-90.)

PROCEDURAL BACKGROUND

In May 2005, Capital Cargo filed a verified complaint in Georgia Superior Court, asserting various claims arising from SPTR's insistence that Capital Cargo was only entitled to one delivery of three cars per day, its issuance of demurrage charges for backups arising from the refusal to provide three switches per day, and its refusal to provide any service at all until and unless the illegitimate demurrage was paid. (Ex. A, D.)

SPTR moved for a referral of this case to the STB. (Ex. F.) In doing so, SPTR conceded that "[i]f this was simply a case concerning contractual interpretation, as Capital Cargo seems to suggest, then the Court would be in a position to consider all merits without involving the STB." (*Id.* at 3.) While SPTR also conceded that "the instant case revolves around the reasonableness of rail service and demurrage charges assessed ... as provided for in the subject Easement Agreement ..." it nevertheless argued that federal law governed, and that the STB "has

⁹ As noted above, GPA intended its tenants to receive the same treatment from SPTR that GPA itself receives.

¹⁰ There had also been a series of similar discussions in January 2005. At no time did anyone state that a written objection would be necessary. (Affidavit of Steve McCarthy, Exhibit G to Capital Cargo's Supplemental Brief in Opposition to SPTR's Motion to Stay and Transfer in the Georgia Superior Court (copy attached hereto at Tab C) at ¶ 3.) Capital Cargo's lack of written objections is unsurprising, given that it had not known about the tariff.

specifically been given the authority and responsibility of governing.” (*Id.*) SPTR further suggested that the contract somehow ceded jurisdiction to the STB -- a proposition that, as set forth above, is inaccurate -- by arguing to the court that “[t]he Easement Agreement that Capital Cargo relies upon was drafted pursuant to these federal rules and references the STB.” (*Id.*)

While Capital Cargo opposed the motion and argued that the case presented issues of contract that would not properly be referred to the STB, the Superior Court disagreed -- citing 49 U.S.C. § 10501 and concluding that this case fell within the STB’s exclusive primary jurisdiction. (Ex. H.) The court did not cite or discuss 49 U.S.C. § 10709. (*Id.*) The court referred the essential question whether SPTR is obligated to provide only one delivery per day, so that demurrage may be charged where cars back up due to SPTR making fewer than three deliveries per day. (Ex. G at 8-11.)

SPTR then filed its Petition for Declaratory Order in the STB, contending primarily that Capital Cargo may not even object to most of the demurrage at issue because it did not present written objections to SPTR within the time set forth in the supposedly-applicable tariffs, and secondarily that any demurrage was reasonable.¹¹ As set forth below, SPTR’s argument is misguided. However, the STB need not even reach that ultimate issue -- because the issues in this case are the subject of a contract, and accordingly the STB lacks jurisdiction over this entire case.

Accordingly, SPTR’s Petition must be dismissed and the proceeding discontinued. This case should return to the Georgia Superior Court.

¹¹ SPTR concedes that Capital Cargo did present timely written objections to the demurrage charges for April and May 2005, which SPTR asserts amount to approximately \$42,320.00. (Petition at 12, 21, Ex. G.)

ARGUMENT

For decades, issues of rail service, and related issues such as demurrage, were governed exclusively by federal regulatory policy under the auspices of the Interstate Commerce Commission. *See, e.g., Entergy Services, Inc. v. Union Pacific R. Co.*, 99 F. Supp. 2d 1080 (D. Neb. 2000). The overarching policy was equality, and common carriers were required to apply rates set forth in filed tariffs -- themselves subject to regulatory scrutiny -- across the board to all prospective shippers, with no room for negotiation or exceptions. *See, e.g., Louisville & Nashville R.R. v. United States*, 282 U.S. 740, 749 (1931) ("The legislative history of the Interstate Commerce Act shows clearly that the evil of discrimination was the principal thing aimed at."); *Parrish & Heimbecker, Inc.*, 2000 WL 688049, * 4 (S.T.B. Docket No. 42031, served May 26, 2000) (regulated common carriage was "traditionally designed to ensure equal, nondiscriminatory treatment of shippers").

In the mid-1970s, Congress set down a path toward deregulation of the railroad industry, with the goal of "increas[ing] reliance on market forces rather than regulation in the governance of rail carriage, but ... retain[ing] regulation where the market forces proved insufficient to protect shippers and the public from abusive railroad practices" *Entergy*, 99 F. Supp. 2d at 1083. This path included major legislation in 1980 and 1995, which dramatically reduced the role of the Interstate Commerce Commission and then eliminated the ICC altogether, replacing it with the STB. *Id.*; *see generally* 49 U.S.C. § 10101. Among the hallmarks of deregulation was the enactment of 49 U.S.C. § 10713, replaced in 1995 with the current section 10709, which allowed parties to enter contracts relating to transportation, rather than having transportation exclusively governed by statutes and regulations. *Id.* at 1084.

Section 10709 states, in relevant part, that:

- (a) One or more rail carriers providing transportation subject to the jurisdiction of the Board under this part may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions.
- (b) A party to a contract entered into under this section shall have no duty in connection with services provided under such contract other than those duties specified by the terms of the contract.
- (c) (1) A contract that is authorized by this section, and transportation under such contract, shall not be subject to this part, and may not be subsequently challenged before the Board or in any court on the grounds that such contract violates a provision of this part.
- (2) The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

Section 10709(b) “was enacted to make clear that other previous regulatory duties imposed on carriers in the past would not be applied unless drafted into the parties’ contract.” *Entergy*, 99 F. Supp. 2d at 1089 (D. Neb. 2000); *see also Dow Chem. Co. v. Union Pac. Corp.*, 8 F. Supp. 2d 940, 941 (S.D. Tex. 1998) (the “purpose of § 10709 is to allow parties the ability to alter federal mandates, or to avoid federal control and oversight over rail contracts. Moreover, the statute also makes clear that it creates no federal jurisdiction itself, which reinforces the statute’s intent to avoid federal intervention.”).

In section 10709, Congress made contracts between carriers and shippers “a separate class of rail service” that is “exempt . . . from all regulation and all of the requirements of the [] Act.” *Parrish & Heimbecker, Inc.*, 2000 WL 688049, *4; *see also Burlington N. R.R. v. STB*, 75 F.3d 685, 687 (D.C. Cir. 1996) (“Contract transport is an alternative to traditional common carrier transport.”).

Section 10709 sweeps broadly, and accordingly there is no “basis for superimposing (non-contract) regulatory provisions upon transportation moving in contract carriage.” *Id.*; see also *American Rock Salt Co. v. Norfolk Southern Corp.*, 180 F. Supp. 2d 420, 425 (W.D.N.Y. 2001) (rights and obligations of shippers and carriers who are parties to contract are limited by contract); *Dow Chem. Co. v. Union Pac. Corp.*, 8 F. Supp. 2d at 942 (“The very purpose of § 10709 is to allow contracting parties to avoid the entire federal regulatory scheme”); *Parrish & Heimbecker, Inc.*, 2000 WL 688049, *5 (“A contract is designed to provide commercial certainty for both the shipper and carrier. That certainty would be undermined if a carrier could unilaterally impose additional charges (beyond those provided for in the contract) for the same service to which the contract applies.”).

Critically, contracts between carriers and shippers are outside the STB’s control. See, e.g., *American Rock Salt*, 180 F. Supp. 2d at 425. “The law certainly seems to be settled . . . that post-1980, issues of contract interpretation, determinations of breach, and appropriate remedies, if any, are properly determined by the courts [and not the STB].” *Entergy*, 99 F. Supp. 2d at 1086; see also *Western Resources, Inc. v. Union Pacific Railroad Comp.*, 2002 WL 1462067 *4-5 (D. Kan. 2002) (STB lacks jurisdiction even if contract only covers a portion of parties’ relationship); *Minnesota Power, Inc. v. Duluth, Missabe and Iron Range R. Co.*, 1999 WL 485895 (S.T.B. Docket No. 42038, served July 8, 1999) (where part of movement is governed by contract and the rest is not, STB can only consider reasonableness of rates of non-contract portion).

Accordingly, the STB dismisses, for lack of jurisdiction, cases presented to it in which the issues arise in connection with a contract. See, e.g., *Cross Oil Refining & Marketing, Inc. v. Union Pacific R. Co.* (S.T.B. Finance Docket No. 33582, served October 27, 1998) (dismissing

complaint alleging unreasonable and inadequate service); *Omaha Public Power District v. Union Pacific R. Co.*, 1997 WL 638221 (S.T.B. Docket No. 42006, served October 17, 1997) (dismissing complaint challenging switching charge); *Central Power & Light Co. v. Southern Pacific Transportation Co.*, 1996 WL 741369 (S.T.B. Docket Nos. 41242, 41295, 41626, served December 31, 1996) (dismissing claim alleging failure to publish local rates).

I. Whether SPTR has failed to honor its service obligation is a contractual issue, and therefore this case must be dismissed for lack of jurisdiction in the STB.

While SPTR's Petition focuses on demurrage, which is addressed below, one of the issues referred to the STB in this case is whether SPTR has failed to honor its service obligations to Capital Cargo. That issue is both separate from, and inextricably intertwined with, the demurrage issue. Indeed, given that nearly all of the demurrage charges at issue in this case arose from SPTR's failure to provide three switches per day -- a fact that SPTR does not dispute -- the demurrage issue cannot be decided until the service issue is decided. As SPTR argued to the Georgia Superior Court in its brief in support of its motion to refer,

All of these claims and the issues resulting from these claims are directly tied to the principal issue of whether or not SPTR owed only one (1) delivery per day to Capital Cargo under certain circumstances or whether, as Capital Cargo asserts, SPTR owed Capital Cargo at least three (3) deliveries per day after Capital Cargo gave reasonable notice.

(Ex. G at 3.)¹²

The service issue is a contract issue -- and therefore this case is not subject to the jurisdiction of the STB. As set forth in detail above, the Lease between Capital Cargo and GPA entitles Capital Cargo to service. The assurances and understandings of the parties prior to signing the Lease -- indeed, the basis of the bargain -- were that three switches per day would be

¹² See also SPTR Petition at 7, ¶ 14 ("The end result of the lease and easement agreements was that SPTR began to provide the railcar switching service for the tenants at the Port Terminal, including the delivery and pick-up of railcars to Capital Cargo.").

provided. *See, e.g., Morgan v. Richard Bowers & Company*, 634 S.E.2d 415, 418 (Ga. App. 2006) (“It has long been our practice to interpret contracts so as to give a reasonable, lawful and effective meaning to all manifestations of intention by the parties rather than an interpretation which leaves a part of such manifestations unreasonable or of no effect.”) (quotations omitted).¹³ The historical practice thereafter confirmed and ratified this contract term. *See, e.g., Veasey v. GCL & FA, Inc.*, 578 S.E.2d 475, 476 (Ga. App. 2003) (terms of agreement may be implied from parties’ prior course of conduct); *American Honda Motor Co. v. Williams & Assoc.*, 431 S.E.2d 437 (Ga. App. 1993) (“[T]he construction placed upon a contract by the parties thereto, *as shown by their acts and conduct*, is entitled to much weight and may be conclusive upon them.”) (quotations omitted) (emphasis added).

SPTR took over GPA’s obligations when it signed the Easement Agreement, which was intended to preserve existing levels of service, and which therefore references existing contracts -- and specifically provides that SPTR “agrees to adopt and/or assume” those contracts. The Lease is clearly one of those preexisting contracts, and SPTR has no argument to the contrary, notwithstanding its deponent’s apparent misunderstanding of the role of preexisting contracts in its agreement with GPA. Indeed, SPTR acknowledges in its own brief in support of its motion to refer that

[e]ach and every aspect of rail service emanates from this [Easement] agreement. . . . All of the Capital Cargo’s remaining issues and alleged causes of action against SPTR revolve around the service provided to Capital Cargo by SPTR, by way of the Easement Agreement. In fact, the terms and conditions set forth in the Easement Agreement form the basis of the Capital Cargo’s First Amended Complaint. Specifically, Capital Cargo alleges that SPTR breached its contractual duties and obligations under the Easement Agreement by failing to provide the necessary level of service as explained in Section 8(b) of the Easement Agreement.

¹³ As noted above, the Lease is governed by Georgia law.

Given this clear acknowledgment that the service issue is the subject of a contract, the service issue is clearly outside the STB's jurisdiction under 49 U.S.C. § 10709.¹⁴

Accordingly, this case must be dismissed and resolved by the Georgia Superior Court.¹⁵

II. The STB's lack of jurisdiction requires dismissal of the entire case, including the demurrage issue.

Likewise, the demurrage issue in this case -- whether SPTR is entitled to the amounts it claims, and whether SPTR is entitled to withhold service for nonpayment of such amounts -- must be dismissed. The broad scope of section 10709's removal of contract service from the reach of federal regulation and the jurisdiction of the STB clearly extends to issues of demurrage; there is no statutory exception giving the STB jurisdiction over demurrage issues even though it lacks jurisdiction over the rest of a case.

As the STB has observed, contract service is "a separate class of rail service" that is "exempt . . . from *all* regulation and *all* of the requirements of the [] Act." *Parrish & Heimbecker, Inc.*, 2000 WL 688049, *4 (emphasis added); *see also American Rock Salt*, 180 F. Supp. 2d at 425 (rights and obligations of shippers and carriers who are parties to contract are limited by contract); *Dow Chem. Co.*, 8 F. Supp. 2d at 942 ("The very purpose of § 10709 is to allow contracting parties to avoid the entire federal regulatory scheme . . ."). Thus, in *Parrish & Heimbecker, Inc.*, the STB held that a carrier could not impose a statutory light-density surcharge in order to augment revenues under a transportation contract. 2000 WL 688049, * 4-5. The STB held that allowing imposition of the surcharge "would blur impermissibly the clear distinction

¹⁴ SPTR's argument may flow from its argument to the Georgia Superior Court that the Easement Agreement somehow cedes jurisdiction to the STB. However, there is no express language to that effect, and no justifiable reading of the language that does exist would yield such a result. Nor is it clear that parties could contract to vest jurisdiction in the STB even if they wanted to, given section 10709.

¹⁵ To the extent that SPTR argues (as it did in the Georgia Superior Court) that the STB possesses unique knowledge of the railroad industry, and therefore that this case belongs in the STB, it bears noting that Congress has already made the policy judgment -- which the STB has acknowledged by dismissing contract cases under section 10709 -- that contract issues belong in the courts.

Congress intended between rail common and contract carriage service and would chill the use of contracting, contrary to Congress' intent." *Id.* at 5. Statutory demurrage is analytically indistinct from a statutory surcharge; neither can be unilaterally imposed on contract transportation.

Even SPTR appears to acknowledge that if there is a contract requiring three switches per day, and/or not to charge demurrage when three switches per day are not made, then the demurrage may not be charged. (SPTR Petition at 13, ¶ 34. ("*Absent any agreement to make three (3) deliveries per day or not to charge demurrage when unable to make three (3) per day, SPTR is required to charge demurrage . . .*" (emphasis added).))

Lest there be any doubt, 49 U.S.C. § 10746 states:

A rail carrier providing transportation *subject to the jurisdiction of the Board under this part* shall compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs related to -- (1) freight car use and distribution; and (2) maintenance of an adequate supply of freight cars to be available for transportation of property.

(Emphasis added). As set forth above, the transportation at issue here is not "subject to the jurisdiction of the Board under this part . . ." because the transportation is the subject of a contract. Accordingly, section 10746 is entirely inapplicable to this case and the entire case must be dismissed. *See H.B. Fuller Co. v. Southern Pacific Transportation Co.*, 1997 WL 476350 (STB Docket No. 41510, served August 22, 1997) (where transportation was performed under contract, STB did not have jurisdiction over demurrage issues even where contract incorporated tariff provisions governing demurrage).

Finally, it bears noting that any demurrage obligations on Capital Cargo's part are themselves creatures of contract -- and, in this case, are also inextricably linked to the service obligations that are part of the contract. Specifically, while neither the Lease nor the Easement Agreement expressly addresses demurrage, the longstanding contractual practice, observed both

by GPA and SPTR until 2005, is that demurrage may be charged -- but not if it results from SPTR's failure to provide three switches per day. That is overwhelmingly the case here -- indeed, as set forth above, all but approximately \$4,000 of the \$149,000 in demurrage that SPTR demands arose from backups caused by SPTR's refusal to make three switches per day. Thus, in addition to being swept out of the STB along with the rest of the case, the demurrage issues in this case are also governed directly by section 10709 and are beyond the STB's jurisdiction for that reason as well.

III. SPTR's waiver argument is misguided and does not provide a basis for the STB to retain jurisdiction over this case.

It bears noting, lest the STB consider simply addressing the merits of SPTR's primary "waiver" argument rather than dismissing the case outright, that the argument is fundamentally misguided. SPTR contends that Capital Cargo failed to provide timely written objections to demurrage charges in accordance with various tariffs, and therefore waived its ability to object -- and that SPTR could not itself waive the ability to enforce such a "requirement" even though it clearly acted inconsistently therewith. SPTR bases its argument on a 1974 case that fails to take into account the contractual nature of the parties' relationship, and that reflects policy judgments that have been rendered obsolete by deregulation.

A. The parties' contract does not contain a term requiring written objections.

The tariff provisions upon which SPTR relies in arguing that Capital Cargo waived its objections to demurrage are not part of the parties' contract. Indeed, Mr. Meyer of Capital Cargo was not told about or given, and did not know of or see, any tariff containing such provisions -- until this litigation was underway. The Lease neither contains nor references such provisions, and the Easement Agreement carries forth and applies to SPTR the terms of the Lease. Clearly, Capital Cargo never agreed to be bound by terms of which it was not even aware.

Moreover, the Lease expressly states that “[f]ailure of Lessor or Lessee to complain of any act or omission on the part of the other party no matter how long the same may continue ...” -- e.g., failure to object to improper demurrage charges -- “shall not be deemed to be a waiver by said party of any of its rights hereunder.” (Ex. I at Article 18.) Thus, the absence of any written-objection provision -- much less one that must be obeyed on pain of a waiver of objections -- is compounded by a provision that expressly *prevents* such a waiver.

B. Even if the contract did contain a written-objection requirement, it could be and was waived.

Even if the parties’ contract did somehow contain a written-objection requirement, such a requirement could -- like any other -- be waived under the law of contracts. SPTR waived its right to rely on any written-objection provision by allowing GPA -- which intended its tenants to receive the same levels of service from SPTR that GPA itself would -- to state its objections verbally. SPTR also negotiated, ostensibly in good faith, with Capital Cargo -- an act that would be totally inconsistent with an intent to rely on a non-waivable written-objection requirement. See, e.g., *Harkins v. Channell*, 618 S.E.2d 129, 132 (Ga. App. 2005) (election to proceed under contract is action inconsistent with repudiation, waiving right to rescind); *Griffis v. Branch Banking & Trust Co.*, 602 S.E.2d 307, 310 (Ga. App. 2004) (agreement to arbitrate is waived by action inconsistent with arbitration).

The result would be different only if, for peculiar reasons of policy unique to railroads, a written-objection requirement could not be waived. That is not the case here, because the rule set forth in the thirty-two year old case upon which SPTR relies (*Colorado & Southern Railway Co. v. Southwestern Roofing & Sheet Metal Co.*, 374 F. Supp. 24 (W.D. Okla. 1974)) is inapplicable to this case and does not reflect the present state of railroad law or policy in any event.

1. **The *Colorado & Southern* “anti-waiver” rule does not apply in a contract-service case.**

The rule of *Colorado & Southern* is inapplicable because, as set forth above, the service at issue in this case is contract service -- “a separate class of rail service” that is “exempt . . . from *all* regulation and *all* of the requirements of the [] Act.” *Parrish & Heimbecker, Inc.*, 2000 WL 688049, *4 (emphasis added); *see also see also American Rock Salt Co.*, 180 F. Supp. 2d at 425; *Dow Chem. Co.*, 8 F. Supp. 2d at 942. The “anti-waiver” rule is a creature of common-carrier rail policy -- *i.e.*, the manifestation of a “regulation” and “requirement” of the Act -- that does not apply to contract service.¹⁶

The thirty-two year old opinion in *Colorado & Southern* confirms, in unmistakably clear terms, that the notion that a tariff’s written-objection requirement cannot be waived is purely a function of the policies underlying the federal regulatory scheme governing railroads:

Since *public policy* is involved here, it makes no difference that the carrier acquiesced in the practice of the shipper and did not demand strict performance of all provisions of the applicable tariff. *Public Policy* demands strict performance of the tariff, and any variation less than strict performance constitutes a *preference*. . . . No compromise or settlement is permitted. . . . There can be no waiver or estoppel with reference to a tariff requirement.

374 F. Supp. at 26-27 (emphasis added); *cf. Louisville & Nashville R.R. v. Maxwell*, 237 U.S. 94, 97 (1915) (filed rate doctrine “is undeniably strict, and it obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination.”).

¹⁶ It also bears noting that even if the tariff provision at issue were incorporated into the parties’ contract -- a scenario that Capital Cargo firmly denies -- the service in this case would not cease to be contract service. *American Rock Salt*, 180 F. Supp. 2d at 425-26; *Omaha Public Power District*, 1997 WL 638221, * 2 & n. 6 (“It is well established that, under 49 U.S.C. § 10709(c)(1), transportation under a rail contract may not be challenged on the ground that it violates the Interstate Commerce Act, as amended by the ICC Termination Act of 1995. Incorporation of tariff provisions into a contract does not alter this basic principle in any way.”).

This anti-waiver rule is clearly a feature of the federal regulatory scheme governing railroads, and accordingly has no place in a case involving contract service. *Parrish & Heimbecker, Inc.*, 2000 WL 688049, *4; *see also American Rock Salt*, 180 F. Supp. 2d at 425; *Dow Chem. Co.*, 8 F. Supp. 2d at 942.

2. The *Colorado & Southern* rule reflects outmoded and obsolete policies.

In addition, even if somehow contract cases were “exempt . . . from all regulation and all of the requirements of the [] Act,” *Parrish & Heimbecker, Inc.*, 2000 WL 688049, *4 -- but not the *Colorado & Southern* anti-waiver rule -- the rule itself is archaic and no longer applicable even in non-contract cases.

SPTR cites no case after 1980 purporting to state such a rule -- and indeed, the overarching rail policy of requiring equal treatment of shippers, in order to prevent discrimination and preferences, has fallen by the wayside since that time. *See, e.g., Entergy*, 99 F. Supp. 2d at 1083; *see generally* “Railing at Railroads,” 28 *Transportation L.J.* 1, * 5-6 (Fall 2000). Thus, 49 U.S.C. §§ 10761 and 10762, the statutes that set forth the filed-rate doctrine -- under which railroads were required to charge the reasonable rates set forth in their properly-filed tariffs, with no room to negotiate or reduce those rates for individual shippers -- were repealed, while at the same time parties were allowed to negotiate individual contracts. *Id.*

The significance of deregulation is that the policies behind the *Colorado & Southern* rule are the same as those behind the repealed filed-rate doctrine -- *i.e.*, the equal treatment of shippers above all else. Thus, just as under the filed-rate doctrine carriers could not charge different shippers different rates, likewise carriers could not compromise on demurrage charges - - and therefore could not be subject to standard defenses such as waiver or estoppel. Against the backdrop of the shift in rail law and policy toward deregulation, it is clear that the *Colorado &*

Southern rule is a relic of another age. The rule has no more viability, in a world where parties are allowed and encouraged to negotiate individual contracts, than the repealed filed-rate doctrine.

Accordingly, there is no rule of law that would prevent SPTR from waiving any written-notice requirement by compromising GPA's demurrage charges, and negotiating in good faith with Capital Cargo to do the same. It follows that there is no reason, in the name of efficiency or otherwise, for this case to stay in the STB.

IV. The Petition should be dismissed as to the overwhelming majority of traffic in this case that is exempt.

While the foregoing discussion provides ample basis for dismissal of SPTR's Petition, it bears noting that nearly all of the cargo at issue in this case appears to be exempt from part IV of Title 49. Accordingly, dismissal of the Petition is proper as it relates to demurrage charges on cars containing that exempt cargo. Pursuant to 49 U.S.C. 11701(b), "[t]he Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action." Exemption of the commodity at issue justifies dismissal, because if the commodity is exempt from part IV of Title 49, then SPTR has no claim under that part.

Pursuant to 49 U.S.C. § 10502, the STB has listed commodities that are exempt from subtitle IV of Title 49. 49 C.F.R. § 1039.11 states that "[p]ulp, paper or allied products ..." are, with certain enumerated exceptions, "exempt from the provisions of 49 U.S.C. subtitle IV."

While Capital Cargo does not have documents specifically listing the commodities shipped in the cars listed in the demurrage invoices, and therefore does not have the specific Standard Transportation Commodity Codes at issue, Exhibit P to SPTR's Petition indicates that the commodity shipped in the overwhelming majority of cars at issue was pulpboard -- which

appears to be exempt.¹⁷ A list of STCC codes contained on CSX's internet web site under the category of "paper, pulp and fiber products" (copy attached hereto at Tab D) contains numerous references to "pulpboard" -- none of which bear an STCC code that matches any of the enumerated exceptions to the broad exemption in 49 C.F.R. § 1039.11. For example, one STCC code for "pulpboard" is 2631117. STCC code "26" is listed as exempt, followed by exceptions to the exemption. There is a gap in exceptions between 26 218 and 26 471, and therefore STCC codes falling within that gap -- *e.g.*, 2631117 -- are exempt. Accordingly, in this example, pulpboard fitting within STCC code 2631117 is exempt. The same is true for pulpboard fitting within the other STCC codes on the CSX list, which are not among the exceptions to exemption.

Likewise, there are shipments of scrap paper at issue, which CSX lists as STCC codes 4023115, 4024110, and 4024115. Section 1039.11 specifically exempts 40231 and 40241; accordingly these shipments would appear to be exempt as well. The same appears to be true for a commodity identified in Exhibit P as "Wastepaper GRND." CSX lists "WASTE PAPER, GROUND, NEC" as STCC code 4024120 -- exempt under section 1039.11. Similarly, another commodity identified in Exhibit P is ground strand board; CSX lists "oriented strand board" as 2499110, which is exempt under section 1039.11.

Accordingly, given that ninety-five percent of the commodities at issue here appear to be exempt from all of subtitle IV of Title 49, SPTR's Petition "does not state reasonable grounds for investigation and action" as to those commodities -- and accordingly the Petition should be dismissed to that extent.

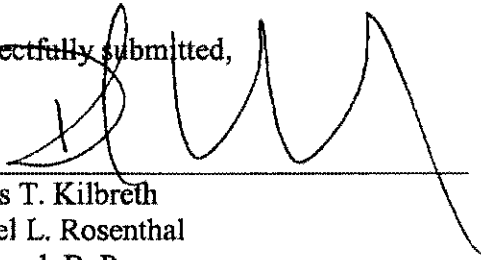
¹⁷ The invoices in Exhibit P indicate that there were 1,517 cars at issue. Of those, 1,436 (nearly 95%) contained pulpboard; 74 contained woodpulp; 2 contained scrap paper; 2 contained ground waste paper; 1 contained "AL FRT RTE SHPM;" 1 contained sawdust boards; and 1 contained ground strand board.

CONCLUSION

This case focuses on contractual issues of service and demurrage, both of which are beyond the STB's jurisdiction under 49 U.S.C. § 10709. Because SPTR's Petition raises no other issues, there is nothing left for the STB to consider. Accordingly, the Petition should be dismissed and this proceeding should be discontinued. Moreover, even if the STB reaches a different result, the vast majority of this case should be dismissed because the subject cargo is exempt from subtitle IV of Title 49.

Dated: November 30, 2006

Respectfully submitted,



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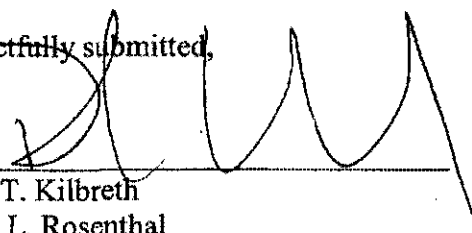
Attorneys for Respondent
Capital Cargo, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to P. Campbell Ford, Esq., Attorney for Savannah Port Terminal Railroad, Ford, Miller & Wainer, P.A., 1200 Riverplace Blvd., Suite 600, Jacksonville, FL 32207 via federal express this 30th day of November 2006.

Dated: November 30, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James T. Kilbreth', written over a horizontal line.

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EXHIBIT F

**IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA**

CAPITAL CARGO INCORPORATED,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO
	)	CV 05-0755-AB
RAIL LINK, INC.,	)	
SAVANNAH PORT TERMINAL	)	
RAILROAD, INC.,	)	
and	)	
GEORGIA PORTS AUTHORITY,	)	
	)	
Defendants.	)	

AFFADAVIT OF KENNETH J. MEYER

Personally appeared before me, the undersigned Notary in and for the State and County below mentioned, Kenneth J. Meyer, who, having first been fully sworn, on oath, deposes and states:

1.

This affidavit is given in opposition to Defendant SPTR's motion for stay and transfer, and is based upon personal knowledge, and where otherwise so indicated, upon the business records of Capital Cargo, Inc. as regularly maintained in the ordinary course of business. I am of the age of majority and know of no legal impediment or disability which would prevent the giving of this affidavit.

2.

I am the president and did form Capital Cargo, Inc. in 1995 for the sole purpose of taking over a rail service warehouse facility which was then in bankruptcy. I negotiated with representatives of the GPA and its then wholly owned railroad subsidiary to take

over the lease of this property. We agreed at that time and prior to signing the lease that the business could not be profitably run without at least three rail deliveries a day. The GPA and its subsidiary agreed to provide at least three deliveries a day and four on occasion when feasible and requested. Capital therefore agreed to pay a lease rate which is currently \$13,500 per month based upon this assurance of rail service for a 60,000 sq. ft. warehouse. The lease rate would be exorbitant and cost prohibitive without the promised rail service. Which allows for the handling of cargo which is relatively more profitable than over the road cargo.

3.

GPA promptly began to provide the promised rail service and continued to do so throughout the entire period the GPA operated the rail service and Capital prospered during these years.

4.

No one contacted Capital prior to the transfer of rail service to SPTR. Capital did not agree to an assignment of GPA's rail service obligations under the lease nor did it agree to any reduction in rail services. After the transfer SPTR continued to provide three deliveries a day to Capital up until the summer of 2004 when delivery problems began to first surface. I called and met with the GPA and demanded a full resumption of service. Mr. Vinson told me at an August, 2004 meeting that he felt I was entitled to only two deliveries based upon the fact that the GPA normally received only two deliveries. I told Mr. Vinson that Capital had always received the three deliveries, had not agreed to anything less, and needed the three deliveries to stay in operation.

5.

The rail service temporarily resumed the three deliveries a day until late 2004 or early 2005 when the deliveries began dropping off again. At this same time, I began to see the SPTR rail engine and crew normally assigned to deliver Capital's cars leaving the GPA property headed South towards the CSX yard off I-16. I have personally seen this occur on more than one occasion and so have other Capital employees. I have seen four separate engines working inside GPA property. I have seen three working inside the GPA at one time. It is simply inconceivable for SPTR to suggest it cannot meet Capital's delivery schedule even with the runs to CSX

6.

During the critical months of February, March and April, 2005 while approximately \$140,000 in demurrage charges accrued, the rail car volume coming into the port to Capital's warehouse did not appreciably increase over 2003 and 2004 levels when the SPTR maintained three daily deliveries. Capital handled 569 cars in the first quarter of 2003, 502 for 2004 and 551 for 2005. Furthermore, Capital has not reduced its capacity to work the cars which takes only two hours per delivery. In fact, Capital has offered to receive deliveries at any time of day or night in order to accommodate any difficulties SPTR might be experiencing in meeting its obligations again to no avail.

7.

Attached as Exhibit "A" is a calendar showing the daily deliveries received in the critical 2005 period. At the recent request of SPTR, Capital reviewed SPTR's records to calculate how much demurrage would be owed by Capital if three deliveries a day had been provided. Attached as Exhibit "B" is a summary of this analysis prepared from

SPTR and Capital business records concluding that all but approximately \$4,000 in demurrage would not have been incurred. This \$4,000 amount was due to an unannounced shipment received in February, 2005 from CSX.

8.

The dispute relating to rail service and demurrage began in earnest in August, 2004. At this time Rail Link told us we were entitled to only one delivery a day. Nevertheless the deliveries began to increase back to two to three deliveries a day. In early January, 2005 we were trying to meet to discuss resolution of all unpaid demurrage and was agreed that because of the reduced service we would need another meeting to review each demurrage bill on an individual basis and agree to an accurate and fair charge for past demurrage as well as service levels going forward as the service had dropped again.

In the meantime, we were calling Jim Balone to advise of the loss in service and resulting demurrage issues.

By the time the February demurrage was received in the first week of March, 2005, the matter had gotten completely out of control. We insisted on a quick meeting which was scheduled for March 22, 2005 to discuss the demurrage charges and service moving forward.

At this meeting Mr. Eason and Tommy Long argued with us about the number of deliveries made each day in the past, the number of deliveries required (i.e. back to one a day), and they refused to agree in principle to credit against demurrage due to less than three deliveries a day. They did however agree to send Jim Balone to review the demurrage bills on a case-by-case basis with the intention that if the resulting demurrage

calculated on a three-trips-a-day basis was agreeable to Mr. Eason, we could resolve the dispute.

Mr. Balone couldn't meet until May 5, 2005 due to an illness and Mr. McCarthy's vacation. At the May 5 meeting Mr. Balone had no authority to credit against demurrage caused by the loss of rail service. He admitted Rail Link should provide the credit, but he couldn't do anything about it. He left and came back with others that same day. At this meeting Rail Link for the first time categorically stated no credits would be forthcoming for loss in service and no further service would be provided until Rail Link received a check for approximately \$66,000. Service was terminated.

9.

Over thirty rail cars and \$1.7 million in cargo were stranded. By providence a certificate of storage had only just been received for another Capital warehouse with rail service. We contacted Norfolk Southern and asked them to deliver the stranded cars to the new facility. After initially meeting resistance from SPTR, Norfolk Southern was able to transfer the cars to the new facility. SPTR then forced Capital to pay over \$8,000 in demurrage under protest to clear the remaining empty cars from the warehouse.

10.

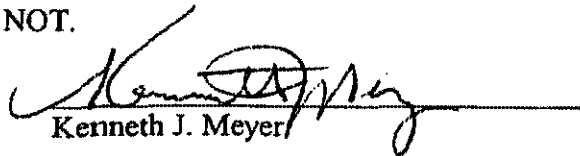
Today SPTR maintains its one daily delivery standard with the modification that demurrage will only be charged after three deliveries. As previously mentioned, Capital cannot afford to operate on less than three deliveries and its customers simply will not accept less service for the same price. Over \$100,000 in Capital business has already transferred to the GPA who is apparently not suffering from any reduction in rail service. I therefore cannot entrust millions of dollars in rail cargo to SPTR under the present

circumstances and have converted the warehouse operation into an over-the-road cargo facility. This has resulted in significant loss of revenues and net losses of approximately \$12,000 per month. Capital will not be able to continue to meet its payroll obligation and lay offs will be inevitable.

11.

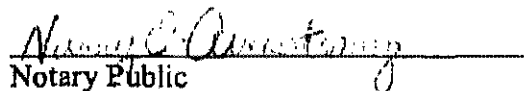
In order for Capital to resume normal operations at the warehouse in issue it is imperative that normal rail service be restored as quickly as possible. Capital seeks nothing more or less than the same rail service which has been provided during virtually the entire period of the ten year lease with the exception of the last 8 months.

FURTHER AFFIANT SAYETH NOT.


Kenneth J. Meyer

Subscribed and sworn to before

me this 14th day of Sept, 2005


Notary Public

My Commission Expires Nov 29, 2008

NANCY E. ARMSTRONG
Notary Public, Chatham County, GA
My Commission Expires November 29, 2008

The powerful strength and stride of this brown bear is enough to stop hunters in their tracks. Being terrestrial in nature, the grizzly bear often makes its own den and can be found preying on fish in the water. Bears will travel miles to reach food supplies such as

berries and have an incredible sense of smell. Their endurance is exceptional and they could outrun a horse. With their large size, they can kill prey with one blow or swim with the strength of an Olympian.

JANUARY 2005

GUIDE TO BEST FISHING DAYS
 BEST  GOOD  POOR 

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
						1 
	3 	4 	5 	6 	7 	8 
	2	2	2	2	2	
9 	10 	11 	12 	13 	14 	15 
	2	1	2	2	0	
16 	17 	18 	19 	20 	21 	22 
	1	2	2	1	0	
	Martin Luther King, Jr. Birthday Observed (USA)					
23 	24 	25 	26 	27 	28 	29 
	2	2	1	2	0	
30 	31 					
	0					
					DECEMBER 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	FEBRUARY 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
						Last Quarter 3 New Moon 10 First Quarter 17 Full Moon 25

New Year's Day

RED FOX

The red fox stands motionless, listening and watching for prey to be detected. Known for hunting mice, the red fox will leap into the air and bring its forelimbs straight down and pin the mouse to the ground. They also feast on insects and fruit. Solitary animals, they

don't form into packs like wolves and prefer an open space to live. They inhabit a wide range of areas including prairie, farmland, forest and tundra. They enjoy a diverse vegetation and remain in the same home range for life.

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
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FEBRUARY 2005

GUIDE TO BEST FISHING DAYS
BEST  GOOD  POOR 

		1 	2 	3 	4 	5 
				3		
6 	7 	8 	9 	10 	11 	12 
2	2	2	1	0	2	
			Groundhog Day (USA)			
13 	14 	15 	16 	17 	18 	19 
3	3	1	2	2	1	
	Valentine's Day		Ask Wednesday			Lincoln's Birthday (USA)
20 	21 	22 	23 	24 	25 	26 
1	1	2	1	1	1	
	Washington's Birthday Observed (USA) Presidents Day (USA)	Washington's Birthday (USA)				
27 	28 					
0	0					

JANUARY
1 2 3 4 5 6 7 8
9 10 11 12 13 14 15
16 17 18 19 20 21 22
23 24 25 26 27 28 29

MARCH
1 2 3 4 5
6 7 8 9 10 11 12
13 14 15 16 17 18 19
20 21 22 23 24 25 26
27 28 29 30 31

Last Quarter 2
New Moon 8
First Quarter 16
Full Moon 24

RING-NECKED PHEASANT

Using grass and weeds to stay concealed, the ring-necked pheasant is a ground nester. The nests consist of grass, leaves and other plants to serve as incubation for the egg laying process. In late summer and early fall, pheasants are likely to be found where there is a good source of insects and greens such as a corn or sunflower field. When the coverage fails, a pheasant will take flight to elude predators. They can reach up to 45 miles per hour in flight but are not long distance flyers. They also run well and evade danger this way.

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
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MARCH 2005

GUIDE TO BEST FISHING DAYS
 BEST  GOOD  POOR 

Last Quarter 3 New Moon 10 First Quarter 17 Full Moon 25		1 	2 	3 	4 	5 
6 	7 	8  St. David's Day (Canada)	9 	10 	11 	12 
13 	14 	15 	16 	17  St. Patrick's Day	18 	19 
20 	21 	22 	23 	24 	25 	26 
Spring Begins Palm Sunday					Good Friday	
27 	28  Easter Sunday	29 	30 	31 	FEBRUARY 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	
	Easter Monday (Canada)					APRIL 3 4 5 6 7 8 11 12 13 14 15 18 19 20 21 22 24 25 26 27 28 29

PRONGHORN ANTELOPE

Extremely fast, the pronghorn antelope can reach up to 60 miles per hour and can easily outrun other animals that try to catch it. With eyes that protrude from the side of its head, the antelope has vision that is both keen and wide angle. Traveling in groups, the antelope

will use hair patches on its rump to signal of possible danger to the herd. Their bristle-like hair allows heat to release in the summer yet insulates against the colder weather in winter. Most herds feast on plants, winter wheat or alfalfa.

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
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APRIL 2005

GUIDE TO BEST FISHING DAYS
 BEST  GOOD  POOR 

Last Quarter 2
 New Moon 8
 First Quarter 16
 Full Moon 24

MARCH
 1 2 3 4 5
 6 7 8 9 10 11 12
 13 14 15 16 17 18 19
 20 21 22 23 24 25 26
 27 28 29 30 31

MAY
 1 2 3 4 5 6 7
 8 9 10 11 12 13 14
 15 16 17 18 19 20 21
 22 23 24 25 26 27 28
 29 30 31

1 2
 2
 All Fish Day

3 

4 

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Daylight-Saving Time Begins

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Passover

Administrative Professionals Day (USA)

LARGE MOUTH BASS

A favorite game fish, the large mouth bass is known to pursue anything that moves in the water. However, they are exceptionally wary of dangers affecting their existence, so catching them may not always be a success. For protective cover, the bass will forage around logs or rocks. They have powerful tails and a firm, muscular body that is built for strength. Bass maneuver quickly and will strike prey at close range and then dash away to return to their safe location.

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
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MAY 2005

GUIDE TO BEST FISHING DAYS
 BEST  GOOD  POOR 

1 	2 	3 	4 	5  1 PLACEMENT REFUSED TO SWITCH American Day	6 	7 
8 	9 	10 	11 	12 	13 	14 
15 	16 	17 	18 	19 	20 	21 
22 	23 	24 	25 	26 	27 	28 
29 	30 	31 				

APRIL 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

JUNE 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

Last Quarter 1
 New Moon 8
 First Quarter 16
 Full Moon 23
 Last Quarter 30

Victoria Day (Canada)
 Memorial Day (USA)

Armed Forces Day (USA)

EXHIBIT B

DAY	DATE	RAIL LINK SWITCHES						TOTAL CARS
		REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	
WED	2-Jun	12:15	12:30	18:00 close				1
THUR								
FRI	4-Jun		8:00	9:30	10:00	11:30	12:00	9
SAT								
SUN								
MON	7-Jun		8:00	9:00	9:45	11:30	13:00	27
TUE	8-Jun	9:45	10:00	12:00	14:00	16:00	16:30	10
WED	9-Jun	9:00	10:15	12:00	12:30	15:00	15:15	
THU	10-Jun	9:00	9:30	12:00	12:30	15:30	15:30	18
FRI	11-Jun	9:30	10:30	12:30	12:30	15:30	16:00	
SAT								
SUN								
MON	14-Jun	10:00	16:00					
TUE	15-Jun	9:15	9:40	11:45	12:00	15:00	6/16/2004 8:00	3
WED								
THU								
FRI	18-Jun	11:00	never received					3
SAT	19-Jun	7:30	14:40					
SUN								
MON	21-Jun	16:30	never received					3
TUE	22-Jun	9:15	9:50					4
WED	23-Jun	9:30	10:15					12
THU	24-Jun	9:30	10:45					4
FRI	25-Jun	9:15	10:45					11
SAT								
SUN								
MON	28-Jun	9:00	11:15					11
TUE	29-Jun	8:30	11:00					18
WED	30-Jun	10:00	10:00					
THU								
FRI								
SAT								
SUN								
MON								
TUE								
WED								
THU								

DAY	DATE	REQUEST TIME	RAIL LINK SWITCHES		JUL 04		TOTAL CAPS
			RECEIVED TIME	REQUEST TIME	RECEIVED TIME	REQUEST TIME	
WED							
THUR	1-Jul	10:00	received	backwards	could not work		4
FRI	2-Jul	8:30	11:00	15:00	7/6/2004 7:00		2
SAT							
SUN							
MON							
TUE	6-Jul	9:15	10:00	12:00	12:45	17:00	7
WED	7-Jul	9:00	9:30	11:45	12:15	14:45	
THU	8-Jul	8:30	9:00	10:45	11:30	12:00	9
FRI	9-Jul		14:00	15:30	7/12/2004 8:00		
SAT							
SUN							
MON	12-Jul	10:00	10:30	13:30	13:30	15:30	29
TUE	13-Jul	9:15	9:30	10:45	11:30	15:30	29
WED	14-Jul	9:15	9:15	11:15	16:00		29
THU	15-Jul	9:30	10:15	10:45	13:15	16:15	10
FRI	16-Jul	9:15	9:15	11:15	14:15	16:00	
SAT							
SUN							
MON	19-Jul	9:30	13:30	15:15	7/20/2004 7:00		11
TUE	20-Jul	8:00	9:00 backwards	9:30 backwards	7/21/2004 7:00		9
WED	21-Jul	9:15	10:00	12:00	15:00	17:00	9
THU	22-Jul	8:50	9:00	11:00	11:45	14:45	9
FRI	23-Jul	11:00	12:30	14:45	17:00		9
SAT							
SUN							
MON	26-Jul	10:00	14:00	17:00	7/27/2004 7:00		12
TUE	27-Jul	9:30	10:30	11:45	16:20		12
WED	28-Jul	9:45	10:45	13:45	7/29/2004 7:00		12
THU	29-Jul	9:30	10:15	13:30	7/30/2004 7:00		12
FRI	30-Jul	9:45	13:00	14:30	16:20	18:00	12
SAT							
SUN							
MON							
TUE							
WED							
THU							

DAY	DATE	RAIL LINK SWITCHES				AUG 04	TOTAL CARS
		REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME		
WED							
THUR							
FRI							
SAT							
SUN							
MON	2-Aug	15:00	16:40				
TUE	3-Aug	9:00	16:20	18:00	8/4/2004 9:50		
WED	4-Aug	11:15	13:00	15:15	8/5/2004 7:00		
THU	5-Aug	9:00	12:30	17:00	8/9/2004 7:00		
FRI							
SAT							
SUN							
MON	9-Aug	10:00	12:15	14:30	15:00	18:00	
TUE	10-Aug	10:00	11:00	14:30	18:00	8/11/2004 8:00	
WED	11-Aug	9:30	10:15	12:00	8/12/2004 8:00		
THU	12-Aug	8:45	11:00	14:15	8/13/2004 7:00		
FRI	13-Aug	8:45	9:00	11:00	12:15	15:00	8/16/2004 7:00
SAT							
SUN							
MON	16-Aug	10:45	13:15	15:30	16:00	18:00	8/17/2004 7:00
TUE	17-Aug	11:00	15:10	18:00	8/18/2004 11:00		
WED	18-Aug	17:00	8/19/2004 11:00				
THU	19-Aug	16:00	8/20/2004 8:00				
FRI	20-Aug	13:30	14:15	16:30	8/23/2004 8:00		
SAT							
SUN							
MON	23-Aug	10:00	13:00	16:00	8/24/2004 9:05		
TUE	24-Aug	12:00	16:00	18:00	8/25/2004 9:30		
WED	25-Aug	14:15	8/26/2004 8:45				
THU	26-Aug	12:00	13:30	16:00	8/27/2004 14:30		
FRI	27-Aug	17:00	8/30/2004 8:00				
SAT							
SUN							
MON	30-Aug	9:30	11:00	14:45	15:00	17:30	8/31/2004 8:00
TUE	31-Aug	8:45	12:30	13:30	14:15	16:15	9/1/2004 7:00
WED							
THU							

DAY	DATE	RAIL LINK SWITCHES SEP 04						TOTAL CARS
		REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	
WED	1-Sep	9:30	10:00	12:00	12:30	15:00	16:45	30
THUR	2-Sep	10:00	11:00	14:30	15:00	18:00	9/3/2004 7:00	30
FRI	3-Sep	10:00	10:00	14:00	9/7/2004 7:00			16
SAT								
SUN								
MON								
TUE	7-Sep	11:00	11:00	14:00	14:00	18:00	9/8/2004 7:00	34
WED	8-Sep	10:00	11:30	17:30	9/9/2004 8:45			30
THU	9-Sep	10:45	12:00	17:00	9/10/2004 8:00			30
FRI	10-Sep	11:30	11:30	17:30	9/13/2004 8:00			11
SAT								
SUN								
MON	13-Sep	11:00	11:00	15:30	9/14/2004 8:00			9
TUE	14-Sep	10:00	10:00	13:45	13:45	17:00	9/15/2004 8:00	30
WED	15-Sep	9:30	9:30	14:30	14:30	17:00	9/16/2004 8:00	16
THU	16-Sep	11:00	13:30	16:30	9/17/2004 8:00			30
FRI	17-Sep	10:00	11:00	12:00	14:00	16:00	9/20/2004 8:00	16
SAT								
SUN								
MON	20-Sep	9:00	12:00	14:45	16:00	17:00	9/21/2004 8:00	8
TUE	21-Sep	10:00	11:00	14:30	9/22/2004 8:00			30
WED	22-Sep	9:30	9/28/2004 9:00					2
THU								
FRI								
SAT								
SUN								
MON								
TUE	28-Sep	11:00	11:00	14:00	14:00	15:30	16:30	11
WED	29-Sep	10:30	12:15	14:30	14:30	16:30	17:00	
THU	30-Sep	9:30	9:30	14:00	14:00	17:00	17:00	
FRI								
SAT								
SUN								
MON								
TUE								
WED								
THU								

DAY	DATE	RAIL LINK SWITCHES		NOV 04		TOTAL CARPS
		REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	
WED						
THUR						
FRI						
SAT						
SUN						
MON	1 Nov	10:00	13:00	14:30	18:00	11/2/2004 8:00
TUE	2 Nov	14:00	15:00			
WED	3 Nov	9:00	11:00	14:00	18:00	18:00
THU	4 Nov	10:00	14:00	11/5/2004 14:00		
FRI	5 Nov	18:00	11/8/2004 8:00			
SAT						
SUN						
MON	8 Nov	10:00	11/9/2004 8:00			
TUE	9 Nov	10:30	11:45	14:30	17:00	11/10/2004 8:00
WED	10 Nov	9:30	9:30	11:30	15:00	17:00 11/11/2004 10:30
THU	11 Nov	12:00	13:00			
FRI	12 Nov	18:00	11/15/2004 8:00			
SAT						
SUN						
MON	15 Nov	9:30	9:30	12:00	15:30	16:00 11/16/2004 8:00
TUE	16 Nov	9:30	10:45	14:30	18:00	11/17/2004 8:00
WED	17 Nov	9:00	10:00	12:00	17:00	11/18/2004 8:00
THU	18 Nov	18:00	11/19/2004 9:00			
FRI	19 Nov	12:00	12:00	17:00	11/22/2004 8:00	
SAT						
SUN						
MON	22 Nov	12:30	12:30	17:00	11/23/2004 7:00	
TUE	23 Nov	10:00	10:30	15:00	19:30	11/24/2004 8:00
WED	24 Nov	11:15	11:15	16:00		
THU						
FRI	26 Nov	8:00	12:00	11/29/2004 8:00		
SAT						
SUN						
MON	29 Nov	11:00	11:00	14:00	15:00	15:30 11/30/2004 8:00
TUE	30 Nov	11:00	11:00	14:00	16:15	17/11/2004 8:00
WED						
THU						

DAY	DATE	RAIL LINK SWITCHES				JAN 05		TOTAL CASES
		REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	
WED								
THUR								
FRI								
SAT								
SUN								
MON	3-Jan	10:30	11:00	15:00	17:00			15
TUE	4-Jan	9:00	12:00	15:00	15:45	21:00	1/5/2005 8:00	15
WED	5-Jan	11:00	11:00	15:00	16:30	18:00	1/5/2005 8:00	15
THU	6-Jan	10:00	10:00	12:30	13:00	17/2005 8:00		15
FRI	7-Jan	10:30	10:30	14:30	15:30	18:00	1/10/2005 7:00	15
SAT								
SUN								
MON	10-Jan	10:30	10:30	14:30	16:30	18:00	1/11/2005 7:00	23
TUE	11-Jan	12:00	12:00	15:30	1/12/2005 8:00			23
WED	12-Jan	10:30	12:30	15:30	17:00	18:30	1/13/2005 7:00	23
THU	13-Jan	10:30	12:00	15:30	15:30	17:00	1/14/2005 7:00	23
FRI	14-Jan	15:00	1/17/2005 7:00					23
SAT								
SUN								
MON	17-Jan	10:30	13:30	16:00	1/18/2005 7:00			6
TUE	18-Jan	11:00	13:00	15:00	15:00	17:30	1/19/2005 7:00	6
WED	19-Jan	9:00	9:00	12:00	13:55	17:00	1/20/2005 7:00	6
THU	20-Jan	17:00	17:00	19:00	1/21/2005 7:00			6
FRI	21-Jan	15:00	1/24/2005 7:00					6
SAT								
SUN								
MON	24-Jan	9:30	11:00	15:30	16:30	18:00	18:00	34
TUE	25-Jan	10:00	12:00	15:00	15:30	17:30	1/26/2005 7:00	34
WED	26-Jan	17:30	19:30					34
THU	27-Jan	10:15	12:30	16:30	16:30	18:30	1/28/2005 7:00	34
FRI	28-Jan	14:45	1/31/2005 7:00					33
SAT								
SUN								
MON	1-30-05 17:30	17:30						49
TUE								
WED								
THU								

DAY	DATE	RAIL LINK SWITCHES		FEB 05		TOTAL CARS
		REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	
WED						
THUR						
FRI						
SAT						
SUN						
MON						
TUE	1-Feb	15:00	17:00			
WED	2-Feb	10:00	12:00			
THU	3-Feb	9:00	10:00			
FRI	4-Feb	15:00	16:30	16:45	16:45	95
SAT	5-Feb	12:00	12:30	15:30		83
SUN						
MON	7-Feb	8:00	8:30	15:15	17:15	
TUE	8-Feb	10:00	11:30	16:30	2/9/2005 7:00	88
WED	9-Feb	13:30	14:00	16:15	2/10/2005 7:00	81
THU	10-Feb	17:30	2/11/2005 7:00			85
FRI	11-Feb	9:00	9:30	17:30	2/14/2005 7:00	85
SAT						
SUN						
MON	14-Feb	9:00	11:00	16:30	16:30	77
TUE	15-Feb	11:00	11:00			69
WED	16-Feb	9:00	9:00	16:30	2/17/2005 7:00	69
THU	17-Feb	11:00	11:30	18:30	2/18/2005 7:00	58
FRI	18-Feb	10:30	10:30			51
SAT						
SUN						
MON						
TUE	22-Feb	12:30	13:00			52
WED	23-Feb	10:30	10:30	16:30	2/24/2005 7:00	50
THU	24-Feb	10:00	16:30	22:00	2/25/2005 10:00	43
FRI	25-Feb	16:30	16:30			46
SAT	26-Feb	10:45	11:45	14:00	2/28/2005 14:30	
SUN						
MON	28-Feb	16:30	3/1/2005 7:00			44
TUE						
WED						
THU						

DAY	DATE	RAIL LINK SWITCHES				MAR 05				TOTAL CARS
		REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	REQUEST TIME	RECEIVED TIME	
WED										
THUR										
FRI										
SAT										
SUN										
MON										
TUE	1-Mar	9:00	9:30	12:00	13:30	16:00	17:00			40
WED	2-Mar	10:30	13:50	15:45	3/3/2005 7:00					33
THU	3-Mar	11:00	13:00	16:30	3/4/2005 7:00					40
FRI	4-Mar	9:00	9:30	12:00	15:30	17:00	3/5/2005 7:00			40
SAT	5-Mar	10:30	3/7/2005 7:00							
SUN										
MON	7-Mar	9:30	10:45	16:00	16:30					47
TUE	8-Mar	10:30	12:15	15:00	16:30	18:30	3/9/2005 7:00			50
WED	9-Mar	10:00	11:30	15:15	17:00					47
THU	10-Mar	10:00	11:00	15:15	16:30	18:00	3/11/2005 7:00			50
FRI	11-Mar	10:30	DERAILMENT		3/14/2005 7:00					61
SAT										
SUN										
MON	14-Mar	10:30	10:30	14:30	15:00	17:00	17:00			110
TUE	15-Mar	10:15	11:00	15:00	15:45	18:00	3/16/2005 7:00			61
WED	16-Mar	11:30	12:00	15:00	15:00					53
THU	17-Mar	9:30	10:30	15:00	16:00					49
FRI	18-Mar	10:30	10:30	14:30	15:30	18:00	3/18/2005 8:00			49
SAT	19-Mar	13:00	3/21/2005 7:00							
SUN										
MON	21-Mar	10:30	12:30	17:00	3/22/2005 7:00					40
TUE	22-Mar	12:30	13:00	15:30	3/23/2005 7:00					39
WED	23-Mar	11:00	16:30	18:00	3/24/2005 7:00					39
THU	24-Mar	10:00	14:30	14:30	18:00	3/25/2005 7:00				39
FRI	25-Mar	10:15	3/28/2005 7:00							
SAT										
SUN										
MON	28-Mar	12:30	13:00	16:30	16:30					39
TUE	29-Mar	10:30	11:30	15:00	17:00					39
WED	30-Mar	12:00	3/31/2005 7:00							
THU	31-Mar	9:45	11:00	15:00	4/1/2005 7:00					

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

CAPITAL CARGO INCORPORATED,
Plaintiff,

vs.

CIVIL ACTION NUMBER
05-0755-AB

RAIL LINK, INC., AVANNAH PORT TERMINAL
RAILROAD, INC., and GEORGIA PORTS AUTHORITY
Defendants.

-----/

The deposition of WILLIAM VINSON, a
witness in the above-entitled cause, taken
pursuant to Notice and agreement, before Kyle J.
Saniga, Certified Court Reporter and Notary
Public, at the Law Offices of Ranitz & Mahoney,
110 East Oglethorpe Avenue, Savannah, Georgia, on
the 30th day of August 2005, commencing at or
about the hour of 4:40 p.m.

COASTAL COURT REPORTING & VIDEO SERVICES

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF:

3 RONALD BERRY, ESQUIRE
 4 134 Habersham Street
 5 Post Office Box 10223
 6 Savannah, Georgia 31401

7 FOR THE DEFENDANT:

8 P. CAMPBELL, FORD, ESQUIRE
 9 Ford, Miller & Walner, P.A.
 10 1200 Riverplace Boulevard
 11 Suite 600
 12 Jacksonville, Florida 32207

13 FOR THE DEFENDANT:

14 DRAUGHN B. WHITEHEAD, ESQUIRE
 15 Ranitz & Mahoney P.C.
 16 110 East Oglethorpe Avenue
 17 Post Office Box 786
 18 Savannah, Georgia 31402

19 INDEX

20 PAGE

21 OPENING REMARKS AND STIPULATIONS ----- 3

22 DIRECT EXAMINATION:

23 By Mr. Berry ----- 3

24 COASCERTIFICATE ----- 59

1 BERRY - VINSON (DIRECT EXAMINATION)

2 (Disclosure was made pursuant to

3 O.C.G.A. annotated 9-11-28

4 (c) and (d) and 15-14-37

5 (a), (b) and (c).)

6 MR. BERRY: This will be the 30 (b)(6)
 7 deposition of GPA taken pursuant to notice.

8 I assume Mr. Vinson's being designated on -- for
 9 all topics in the notice?

10 MR. MAHONEY: Yes.

11 MR. BERRY: Okay.

12 WILLIAM VINSON,

13 having been produced and first duly sworn as a
 14 witness, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BERRY:

17 Q Mr. Vinson my name's Ron Berry and I
 18 represent Capital Cargo in this lawsuit that's
 19 been filed against Rail Link and SPTR and GPA so
 20 I'll be asking you a series of questions and if
 21 I ask one that you don't understand, you stop me
 22 and let me know. We don't want you to guess,
 23 speculate or miss -- we don't want to
 24 miscommunicate so if you don't think you
 25 understand the question let me know, I'll repeat

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 it rephrase it, we'll do whatever we can to try
 3 to stay on the same wave length if that's
 4 suitable enough ground rules.

5 A That's fine.

6 Q And to verbalize, obviously, your
 7 responses, that makes it easier for the court
 8 reporter. And we would propose to stipulate to
 9 the qualifications of the court reporter, method
 10 and manner of taking down the deposition, waive
 11 all formalities. Would the witness like to read
 12 and sing?

13 MR. MAHONEY: We'll reserve the
 14 reading and signing.

15 MR. BERRY: You can do that in
 16 front of a notary. The transcript to
 17 be sent to your office?

18 MR. MAHONEY: That's fine.

19 MR. BERRY: And we'll reserve
 20 objections except as to the form of the
 21 question and responsiveness of the
 22 answer until those matters can be
 23 presented to the court.

24 BY MR. BERRY:

25 Q And with all of that behind us we can
 COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 ask you to give us your full name, please.

3 A William O. Vinson V-i-n-s-o-n.

4 Q And how are you currently employed,
 5 sir?

6 A I'm employed by the Georgia Ports
 7 Authority.

8 Q In what capacity?

9 A I'm the Operational Auditor.

10 Q Now you're going to have help me
 11 because I'm an English major and operational
 12 auditor puts me way out of bound so I need to
 13 know what somebody like that does.

14 A I am somewhat familiar with most of
 15 port operations. I deal with the -- primarily
 16 with our various port operations. Primarily in
 17 evaluating policies, procedures and our
 18 adherence to them, internally.

19 Q Would that include lease agreements
 20 with tenants which is what we're here to talk
 21 about today?

22 A As we have to -- as I have some issues
 23 that involve those lease agreements.

24 Q On an as needed basis I guess is what
 25 you're saying.

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 A On an as needed basis, I do not deal
3 with the leases on a day-to-day basis.

4 Q And what would be the first opportunity
5 you had to get involved in the lease with
6 Capital Cargo that's in issue in this case?

7 A When I met with Kenny and -- Kenny
8 Meyer.

9 MR. MEYER: Yeah.

10 THE WITNESS: Yeah Meyer and
11 Miriam Thompson last year on I believe
12 it was August 17th.

13 BY MR. BERRY:

14 Q Okay. I guess I should have asked you
15 how long you've been with the GPA, I didn't go
16 through your resume far enough back, how long?

17 A Thirty-two years.

18 Q Thirty-two years?

19 A In the end of October of the year.

20 Q And how long have you been the
21 Operational Auditor?

22 A Twenty-two, twenty-three years.

23 Q Okay. Have you had anything to do with
24 the rail operations out at the port?

25 A I had to do with the -- when the Port
COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 Authority elected to --

3 Q Sell it?

4 A -- privatize our rail operations, I
5 worked with the Director of Finance in the
6 process of putting the proposal together,
7 shopping it and assisted our management in the
8 selection.

9 Q Okay. But in the day-to-day
10 operational aspects of the railroad prior to its
11 privatization did you ever have an occasion to
12 be called in to address issues at the rail --

13 A No, I did not.

14 Q -- level?

15 A No, I did not.

16 Q All right. You've seen the lease
17 agreement in this case, have you not, the
18 written lease?

19 A I have seen the lease agreement, yeah.

20 Q And it has a reference in there, rail
21 service I think is about as descriptive as it
22 that says that the GPA will provide rail service
23 to Capital Cargo, are you familiar with that
24 provision?

25 A I am familiar with that provision.

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Now, do you know of any definition that
3 has been agreed to between the GPA and Capital
4 Cargo as to the meaning of the term rail service
5 as it's used in that context in this lease?

6 A I am not aware of any agreement between
7 rail -- between Capital Cargo and the Ports
8 Authority as toward anymore precise definition
9 that is shown in the lease.

10 Q Okay. And do you -- have you made any
11 effort to determine if any verbal conversations
12 took place between the GPA and Mr. Meyer
13 regarding the nature of that rail service at or
14 before the time the lease was entered into?

15 A I have not made any significant effort
16 on that point.

17 Q Do -- do you know, personally, who
18 handled the negotiations of that lease on behalf
19 of the GPA with Kenny Meyer?

20 A No, I do not.

21 Q Have you made an effort to try to
22 identify or locate who would have been
23 responsible for those negotiations?

24 A No, I have not.

25 Q Would it make any difference to you if
COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 someone at the GPA who was responsible for the
3 negotiations of the lease did have specific
4 conversations with Mr. Meyer about the number of
5 deliveries that would be made to his facility?

6 A If there --

7 MR. MAHONEY: Ron, let me ask you
8 just for clarification, are you talking
9 about the original lease that was
10 entered into or are you talking about
11 --

12 MR. BERRY: When it was assigned
13 to Capital Cargo.

14 MR. MAHONEY: When -- following
15 the Bankruptcy?

16 MR. BERRY: Right.

17 MR. MAHONEY: Of -- okay.

18 BY MR. BERRY:

19 Q I hope you understand that when I said
20 the lease with Capital Cargo I'm talking about
21 when Capital Cargo --

22 A Yeah.

23 Q -- actually came in.

24 A In the year -- around 2000.

25 Q Right. It's actually 1995.

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 A Okay.

3 Q So my question, again, was, what impact
4 would it have on your consideration of GPA's
5 obligations under this lease if there were
6 specific conversations between Mr. Meyer and a
7 GPA representative negotiating with him about
8 the number of rail deliveries that he would
9 receive at this facility under this lease, would
10 that make a difference?

11 A If it were known.

12 Q Right.

13 A At the Ports Authority, now, I do not
14 believe that anybody is at the Port Authority
15 that would have been involved in those
16 negotiations at that time.

17 Q Okay. I guess that's the point I'm
18 trying to make.

19 A Yes.

20 Q If -- is there -- I was going to ask
21 you, do you know of anybody, currently at the
22 port, that typically would have done those kinds
23 of negotiations so that you could go find them
24 and say, you know --

25 A No, I do not.

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q -- where -- how did this thing get
3 started and how has it evolved?

4 A No, I do not.

5 Q Okay. Now, do you have an
6 understanding of what kind of rail service Mr.
7 Meyer actually began to receive at that facility
8 after signing the lease and opening up his
9 business under this lease?

10 A I have no knowledge of those operations
11 until last August the 17th.

12 Q Now, at that August 17th meeting, did
13 you gain some understanding from Mr. Meyer as to
14 the level of service he had been receiving for
15 the --

16 A I asked Mr. Meyer for evidence of
17 whether -- you know, where did we have that in
18 writing to support that lease agreement as part
19 of the negotiations and that was never provided
20 me.

21 Q Okay. Let me make sure I understand
22 you, what you're saying is, if there were
23 discussions about the level of service in
24 writing you wanted to see them?

25 A Yes, I did.

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Okay. That wasn't my question, my
3 question -- because you've already told me you
4 don't know of anything --

5 A No.

6 Q -- like that, all right. So what I'm
7 now asking is, what is your understanding as to
8 what the service was that he actually received
9 for the say first ten years of the lease for the
10 time during which the GPA was providing rail
11 service, which would have been through 1998 is
12 my understanding?

13 A I don't know what his daily service
14 was.

15 Q Well, would that make any difference to
16 you?

17 A No. I would look at the lease and say,
18 you know, where is the evidence to support what
19 is that volume but I did not see that anywhere.

20 Q Well, I -- I think we've already
21 looked. I mean that would be the best way to do
22 it if there's something in writing that says how
23 many deliveries need to be made a day then
24 that's the quickest and easiest way to answer
25 the question, is that what you're saying?

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 A That would be the only way I could
3 definitively judge that. None of the people at
4 the Ports Authority when I have asked Miriam
5 Thompson who's the current administrator, does
6 she know of anything definitive in it, we have
7 searched our files, we have found nothing.

8 Q All right. Well, let me put it to you
9 this way since -- have you asked anybody about
10 what the level of service is that he actually
11 received for the first ten years of this lease?
12 Have you even asked that question?

13 A No, I have not.

14 Q All right. Let me ask you to assume
15 that he customarily received three deliveries a
16 day, all right, sometime more when he asked for
17 them, now, do you know of any reason -- is there
18 anything that has been said or done between GPA
19 and Mr. Meyer that would authorize a departure
20 of that standing practice and level of service,
21 that entire -- hold on hold on, I hadn't
22 finished the question.

23 MR. MAHONEY: Let him finish the
24 question.

25 BY MR. BERRY:

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Do you know of anything that occurred
3 specifically during the months of January 1st of
4 2005 through June 1st of 2005 that would
5 authorize a departure from whatever level of
6 service had been previously provided under the
7 lease for the ten years preceding, you
8 understand my question?

9 A No, I do not.

10 Q Something that changed the status quo,
11 did somebody say or do anything between the GPA
12 and Kenny that would change the level of
13 service?

14 A No.

15 Q Okay. So you would agree that whatever
16 level of service was required and performed
17 under the contract from day one until January
18 1st 2005 is the same level of performance that
19 would be required between January 1st 2005 and
20 June 1st 2005?

21 A I don't know how to answer that
22 question.

23 Q It's the same level, nothing's changed.
24 Your obligations, whatever they are, have been
25 the same from day one of that lease, nothing's

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)
2 been changed?

3 A I read our agreement and our agreement
4 I think says we are to provide rail service,
5 which we do.

6 Q Well, my question is, nothing has
7 changed, whatever that language means, nothing
8 has been said or done by anybody to change it
9 from day one until today?

10 A I understand that there were some
11 issues concerning demurrage that arose.

12 Q No no no, I'm asking you, has the
13 contract been changed?

14 A Between the Ports Authority and?

15 Q Mr. Meyer or Capital Cargo?

16 A No, it has not.

17 Q Okay. Now, do you understand what the
18 term custom and practice is, what that term
19 means in connection with the performance of
20 contracts, I don't know?

21 A No, I'm not an attorney.

22 Q Do you review contracts?

23 A No, I do not.

24 Q Well, I think you're telling me you
25 reviewed this contract?

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 A I reviewed this contract.

3 Q Okay. Now --

4 A As related to the service levels
5 that --

6 Q That's right.

7 A -- Kenny brought up last year.

8 Q Now, are you familiar with the term
9 custom and practices as it is used in connection
10 with trying to gain a more specific
11 understanding of what a term might mean in a
12 contract?

13 A No, sir, I don't follow your question.

14 Q All right. I'm going to throw this
15 out, you can either agree or disagree with me
16 but I'm going to throw it out for you so you can
17 consider it that when the parties are performing
18 a contract they are actually telling you what
19 they think that contract requires by virtue of
20 how they perform it, have you ever been
21 acquainted with that concept?

22 A No, sir, I've not heard that before.

23 Q So you don't think that what the
24 parties actually do for ten years bears any
25 relevance on what they understood the contract

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)
2 to require?

3 A Not necessarily.

4 Q Well --

5 A I think the contract was vague.

6 Q Right. But vague can be defined
7 through performance of the parties.

8 A That, I presume, is a legal --

9 Q Okay.

10 A -- and I'm not an attorney.

11 Q But as far as you're concerned, sitting
12 here today, performance doesn't enter into your
13 equation?

14 A I don't understand your question.

15 Q In other words, the fact that they gave
16 three deliveries a day for ten days doesn't make
17 any difference?

18 A I understand that they are getting
19 still getting three deliveries per day.

20 Q Where did you get that understanding?

21 A I got the understanding from
22 discussions with I believe the Rail Link
23 personnel that there're two to three deliveries
24 per day and that their service levels are in
25 excess of Port Authority's service levels.

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Well, that's just plain out false
3 information. What period of time are you saying
4 that you think that Mr. Meyer was getting two to
5 three deliveries a day?

6 A From last August until apparently there
7 were some changes in payment terms.

8 Q No no, we're sticking with the
9 deliveries, just the number of deliveries.

10 A What?

11 Q You said two to three deliveries that
12 you understand that Mr. Meyer has received,
13 consistently, two to three deliveries from
14 August of 2004 until today, is that fair?

15 A The services were available two to
16 three times a week.

17 Q And who told you this?

18 A That was the Rail Link personnel.

19 Q Who? I got to have a name, I mean
20 we're in the fact checking business here and
21 what he's telling you isn't right, it's not
22 right. What he's telling you is false, I want
23 to know the man's name or woman's?

24 A One of the -- the ones when it came up
25 after Mr. Meyer visited with us last year and we

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 contacted Rail Link and said that there has been
3 an allegation of service.

4 Q Yes, sir. And whose is this person
5 that --

6 A Indicated to him --

7 MR. MAHONEY: Ron, let him finish
8 his answer.

9 BY MR. BERRY:

10 Q Okay, go ahead.

11 A That was provided to us. We advised
12 Rail Link. I understand that they did send
13 personnel up to Savannah to visit with Kenny in
14 the August time frame and I do not remember the
15 particular dates, somewhat after August the
16 18th.

17 Q Of 2004?

18 A In 2004. And that the agreement was
19 that they would endeavor to give at least two
20 and try to give three per day.

21 Q Who is this person?

22 A Billy Eason, President of Rail Link.
23 He is current President.

24 Q I understand.

25 A He was in a different position.

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Whatever his job was at that time
3 that's who you talked to?

4 A Right.

5 Q What have you done to verify this
6 information that this man has given you?

7 A I have not done anything. I have
8 relied upon Capital Cargo to come back to me.

9 Q So --

10 A Or to us, you know, with further
11 allegations. We assumed that it was taken care
12 of.

13 Q Well, in the better late than never
14 category, it ain't happening, all right, between
15 January 1st particularly between January 1st and
16 May 1st of 2005 the service just dropped down to
17 zero on very very many days, ones -- one
18 deliveries on very very many days and as a
19 consequence of that the cars that have been
20 brought into the port schedule for Mr. Meyers'
21 facility started backing up and his demurrage
22 bills went from I guess you could say he might
23 have had a high of about two thousand in the all
24 the past ten years that he had been working
25 there. He's now getting demurrage bills for

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 forty and fifty thousand dollars a month. When
3 did you first learn that?

4 A I first learned that there were
5 demurrage issues I believe in May.

6 Q Okay. Demurrage issues and fifty
7 thousand dollars a month are two different
8 things, all right. Did you know the level of
9 the order of magnitude of the demurrage that the
10 railroad was charging Mr. Meyer per month?

11 A No, I did not.

12 Q Okay. You should know that it's fifty
13 thousand plus a month and they're now, for about
14 a three month period, seeking about a hundred
15 and fifty thousand dollars in demurrage, okay,
16 do you understand what I'm saying?

17 A You just told me.

18 Q All right. Do you have any reason to
19 disagree with that?

20 A No, I have no reason to disagree.

21 Q Have you checked -- have you made any
22 investigation into this to find out what the
23 order of the magnitude of the demurrage was that
24 has been charged?

25 A No.

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Okay. Now, do you understand -- do you
3 have any explanation as to how a hundred and
4 fifty thousand dollars worth of demurrage could
5 be charged to Mr. Meyer during a three month
6 period of time, say, mostly February and March
7 and April of 2005?

8 A Do I understand how it could be
9 charged?

10 Q Or how it was? Who's at fault? What
11 happened? I think you can agree with me that
12 it's not a normal business practice for Mr.
13 Meyer to be incurring fifty thousand dollars of
14 demurrage a month, we can agree on that, can't
15 we? It would represent some kind of an unusual
16 circumstance, correct?

17 A It would be a circumstance.

18 Q Well it would be unusual in the sense
19 that it never happened before and it never
20 happened since, that's unusual, right? Right?

21 A I would say, you know, that a change
22 did occur at that time, yes.

23 Q Okay. So what's going on?

24 A I have no idea.

25 Q What may have happened?

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 A I have no idea.

3 Q What has Kenny done or not done that
4 would place the fault on him? And when I say
5 Kenny I'm talking about Capital Cargo, his whole
6 business. What have they done to cause this
7 hundred and fifty thousand dollars worth of
8 demurrage?

9 A I think by the truer sense they have
10 not worked the cars sufficient to get them out
11 of the yard.

12 Q Okay. Now, what is it that they
13 haven't done in terms of working cars?

14 A They have not unloaded cars and
15 released them back to Rail Link.

16 Q So what you're --

17 A Or SAPT.

18 Q So what you're saying is that you think
19 that they're holding their cars too long in the
20 warehouse. They get them but they're not
21 turning them as fast?

22 A Well demurrage is going to occur when
23 the cars do sit in the yard.

24 Q Yeah, but there's a lot of different
25 ways that can happen and you're only telling me

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 about one of them, which is if he's taking too
3 long to turn the cars when they're in his
4 facility and that's what you're telling me,
5 isn't it?

6 A No, sir.

7 Q All right.

8 A I said the cars are not being worked.

9 The cars are accumulating and the cars do -- I
10 have not said whether Kenny was working these,
11 dispatch or not or whether the shippers were
12 dumping cars on Kenny, I don't know. I don't
13 know what the circumstances were that caused it.

14 Q Let me give you a couple assumptions,
15 since you don't know. His volume of cars coming
16 in the port has not changed, okay. So it's not
17 a spike in the increase of cars coming into the
18 Savannah Port destined for Kenny's warehouse,
19 you understand that?

20 A That is what you're saying.

21 Q And I'm telling -- do you have any
22 reason to disbelieve that?

23 A No, I have no reason to believe or not
24 believe.

25 Q Okay. So but the volume is staying the

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 same. Now why is Kenny responsible for the
3 demurrage?

4 A I didn't say that Kenny was
5 responsible. I said the cars have sat, the
6 demurrage has accrued.

7 Q Well, who's at fault? We can all agree
8 that's not something we want to see happen,
9 right? We need to fix this situation if we can,
10 correct?

11 A I'm -- I think that you -- I'm not
12 hearing --

13 Q We got a business?

14 A What is this question in here?

15 Q We got a business we're operating here
16 and it can't afford to pay fifty thousand
17 dollars of demurrage a month, you understand
18 that, don't you?

19 Does the GPA pay fifty thousand dollars
20 a month in demurrage?

21 A No, sir, we work rail cars.

22 Q And if the GPA had fifty thousand
23 dollars worth of demurrage bills coming in a
24 month you'd get on that right quick, wouldn't
25 you? You'd say, we're going to fix this problem

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 because it ain't going to keep happening, right?

3 A We make a decision on demurrage whether
4 we're going to pay demurrage or whether we're
5 going to pay overtime or whether we're going to
6 pay for special switching to off our switching
7 to accommodate the task.

8 Q Talk to me a little bit --

9 A And as a matter of fact, we do pay
10 demurrage and we have paid demurrage last year.

11 Q Yeah but my question was whether it was
12 fifty thousand a month?

13 A We've had months where we've incurred
14 thirty to forty thousand dollars per month.

15 Q Okay. What is this -- tell me about
16 this pay for off something special switching?

17 A Yeah, if they're special switches, if
18 we want ones out of the ordinary time we will
19 ask for it. We will pay for it, on an hourly
20 basis to Rail Link to handle it.

21 Q Now I need to know a little bit more
22 about that, now when you say off time what are
23 you referring to?

24 A I'm -- outside normal working hours, if
25 we want special switches. If we want to work
COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 Saturday. If we want to work Sunday.

3 Q All right. And tell me, how does that
4 work, I mean tell me the deal. You call in an
5 say, we want a special switch, how much do they
6 charge for it?

7 A You would have to look at their
8 terminal tariff. I would suspect it is in the
9 range of \$175 to two hundred dollars per hour, I
10 don't know, specifically.

11 Q And it's in the tariff?

12 A I believe it in their rail tariff.

13 Q And how many switches does GPA normally
14 get a day?

15 A One to two.

16 Q And how do you determine whether it's
17 going to be one or two?

18 A On demand. If we have -- if we're
19 going to work a second shift we will ask for a
20 placement around a shift change, three or four
21 o'clock in the afternoon and it will be
22 arranged. Sometime after lunch the empty cars
23 will be pulled for that morning, the new cars
24 will come in and then we would do it -- we will
25 work that on a second shift.

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Now, y'all take twenty-two at a time
3 or?

4 A We have some -- twenty-two does not
5 sound to be an unreasonable amount. We do have
6 -- the siding's particularly at our warehouse
7 because we have full length sidings.

8 Q So you're saying you think twenty-two
9 sounds about right or you --

10 A Yeah, I can't argue with that.

11 Q Okay. Now, what happens -- can you
12 tell me if there've been occasions when y'all
13 have asked for one, you know, in other words,
14 either the first one never came or you asked for
15 the second one and it didn't come, does that
16 happen?

17 A I suspect that there are some
18 occasional miscommunications.

19 Q How often would that occur?

20 A I would have to say infrequently.

21 Q Infrequently. And on those occasions
22 when it does occur, what happens in regards to
23 any backup, and you've got some backup, right?

24 A Yes, well, if we would - we will advise
25 them as soon as we notice that it has happened,
COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 we will rectify it. If we have demurrage that
3 comes in on that car we will remind them that we
4 did call for that car and it -- you know, for
5 that car to be removed and the blockage and we
6 will adjust the demurrage bill for that
7 particular car, that particular event.

8 Q In other words, for those cars that
9 would have been worked, had that delivery been
10 brought in, you are unwilling to pay for
11 demurrage during the time that they are not
12 bringing it to you after you have requested it,
13 is that correct?

14 A Yes.

15 Q Okay.

16 A Yes.

17 Q Did you know that when Kenny asked for
18 his shipments they don't bring them and yet they
19 are charging demurrage and that's the very
20 reason we're here, they're charging the
21 demurrage after Kenny has sent the fax. Do
22 y'all send faxes, too?

23 A I'm not sure whether we have fax or we
24 carry over I believe the expressions is a pull
25 sheet.

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Okay. But it is communicated?

3 A It is communicated to their office.

4 Q Well, he's told to send a fax and he
5 sends the fax and they receive it, there's no
6 argument about that and they don't send the
7 shipments in, sometimes he doesn't get any,
8 sometimes he gets one, sometimes he gets two but
9 very rarely three particularly during the period
10 of time that we're most interested in, which is
11 this three month period of say February, March
12 and April of 2005, okay, so that there are times
13 when he's asked for the delivery. It's a
14 delivery that he's previously gotten for ten
15 years, okay. He's not getting the delivery and
16 they're charging demurrage, are you with me so
17 far, do you understand that?

18 A Yeah, I'm hearing what you're saying,
19 yes.

20 Q Okay. So if we agree with all that to
21 be true, can you explain to me why they're
22 charging Mr. Meyer demurrage but they're not
23 charging the GPA under a similar circumstance?

24 MR. MAHONEY: I'm going to object

25 to that on the basis that there's no
COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 way that this witness can agree that
3 all that is true. He has no knowledge
4 of it.

5 BY MR. BERRY:

6 Q I'm asking him, can you say that that's
7 untrue I mean if you have --

8 A I can't say whether it's true or
9 untrue.

10 Q Okay. I'm just asking you to --

11 A It is a statement that you and your
12 client are making.

13 Q Yeah, I'm just asking you to assume for
14 purposes of this question, do you know of any
15 reason -- and I mean there could be a practical
16 explanation for why the GPA might be able to
17 avoid demurrage in that circumstance whereas
18 Kenny can't, I don't know, I mean I -- I don't
19 have -- okay, there may be a special agreement
20 between the GPA and --

21 A There's no special agreement --

22 Q Okay.

23 A -- between GPA as opposed to any of the
24 customers.

25 Q Okay.

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 A In fact, our relationship with Rail
3 Link we insist that all of the tenants on the
4 thing that the service levels be at the same or
5 better than is provided to the Georgia Ports
6 Authority.

7 Q So that would mean there should not be
8 any day when Kenny receives zero deliveries and
9 the Port Authority receives one or two and
10 Kenny's getting charged demurrage that day?

11 A In the absence of any other --

12 Q All things being equal, all things
13 being equal.

14 A I would say all things being equal, but
15 I'm not conceding that all things are equal.

16 Q Now what I need to do is figure out
17 what we need to do to get -- and would you
18 agree, then that -- how does that measure up to
19 the lease obligations, then? Are we meeting our
20 lease obligations when these kind of things are
21 happening, if they're happening?

22 A The -- if they are, indeed, not
23 receiving the service, the rail service and in
24 the absence of any other payment terms or any
25 others issues why they're not.

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Right.

3 A Then we would certainly have something
4 that we should pursue and determine.

5 Q Well, I'm not trying to trick you and
6 I'm not trying to, you know, badger you here
7 today but I want you to know, if there's nothing
8 else that you take away from this deposition, I
9 want you to know that there are less than three
10 deliveries being made to Kenny's operation. On
11 many days none, on many days one during this
12 period of time and it's a critical period of
13 time when fifty thousand dollars plus a month
14 demurrage charges are being racked up against
15 him and he has begging them, as you might
16 imagine he would, to bring in the cars, not just
17 avoid demurrage but because he's got a business
18 to run, he's got customers to serve just like
19 the GPA does, y'all have got obligations to meet
20 and he can't do his job unless they bring the
21 cars in to him, so --

22 A Again, I am not -- I do not have --

23 Q I'm not asking you to believe me or
24 disbelieve me, I'm just telling you right now,
25 putting you on notice because I'm trying to work

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 for a solution in this case you might find that
3 hard to believe but my job, in this thing is,
4 number one, to get Kenny back up and running
5 again, okay. We can argue with the railroad
6 about the demurrage, okay. But number one, to
7 get the business back up and running again, I
8 think you could appreciate that.

9 What I'm telling you is that A, they
10 didn't do it during that critical period of
11 time. B, they don't agree to bring the three
12 deliveries in, going forward, okay, and so --
13 and Kenny says, that's less service than what
14 I've gotten in the past, right. I never agreed
15 to accept less service. I'm still paying you --
16 you know he's still paying the same rent. Just
17 because they're reducing his rail service
18 doesn't mean he got a reduction in his rent,
19 okay, he's still paying the rent. He's getting
20 a reduction in rail service. He's being
21 treated differently than the GPA's as you've
22 just established for me and he's saying, I'm
23 tire of it and he's saying -- I'm just telling
24 you, he's saying that the GPA can fix this
25 problem for me.

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 A Is there a question in here?

3 Q Yes. I want to get you to the point,
4 all right, where you got what information you
5 need to satisfy yourself that the stuff I told
6 you today are the facts, okay.

7 We've got the railroad delivery
8 records. We've got -- do you know Mr. Steve
9 McCarthy, he works for Kenny.

10 A No, I do not.

11 Q All right. But in any event, he works
12 for Kenny and he's in charge of the day-to-day
13 and he's run calculations to show what
14 deliveries were made on what days and so forth,
15 you know, very specific records.

16 If we were to produce those records
17 with an explanation to your attorney, would you
18 agree, then, to look over those records and
19 satisfy yourself as to the level of deliveries
20 that were made by Rail Link to Kenny. You can
21 also look at their calculations of demurrage --

22 A I suspect that we could look at the
23 Rail Link records.

24 Q They are. We're going to give you
25 both.

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 A Okay.

3 Q We're working our analysis off of their
4 records, okay. They gave us their records. We
5 thought we had an agreement on this thing which
6 was --

7 A I did, too, and we --

8 Q Let me explain that to you. We thought
9 that we had an agreement to go back to three
10 deliveries a day, okay. And then the lawyer,
11 Mr. P. Campbell Ford said, and let's use the
12 three delivery a day standard to look backwards
13 at all the demurrage that you've calculated and
14 he said, sounds like a good idea to me and we
15 said we will agree to pay whatever demurrage is
16 due after three deliveries a day, okay. You
17 understand what we're trying to do, do you
18 understand?

19 A It's --

20 Q As a concept do you understand?

21 A Yeah.

22 Q So we went and did that analysis and
23 you know how much demurrage is there if they'd
24 made the three deliveries a date from January
25 1st through June 1st of 2005, four thousand
COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 dollars. They don't dispute that. I want to
3 make clear to you they don't dispute that but
4 now they say we don't like the three delivery a
5 day rule anymore because, why, four thousand is
6 a lot less than a hundred and fifty thousand and
7 suddenly they don't like that, that methodology
8 for solving our problem, okay.

9 But if I hear what you're saying,
10 you're saying you guys ought to be making the
11 deliveries if Kenny's asking for them and if
12 you're not you shouldn't be charging him
13 demurrage and if you're --

14 MR. MAHONEY: I would object to
15 any mischaracterization of what the
16 witness says.

17 MR. BERRY: That's fine.

18 MR. MAHONEY: Ron, I would just
19 say, for the record that you're making
20 a lot of comments.

21 MR. BERRY: Yep.

22 MR. MAHONEY: You're making a lot
23 of statements.

24 MR. BERRY: Yep.

25 MR. MAHONEY: You're making a lot
COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)
2 of assumptions.

3 MR. BERRY: Yep.

4 MR. MAHONEY: And we're here
5 prepared to respond to the areas that
6 you've designated in your 30(b)(6)
7 notice.

8 MR. BERRY: Well, these are the
9 areas.

10 MR. MAHONEY: We can't respond to
11 assumptions and things that the
12 railroad has allegedly agreed to do and
13 now renigs on doing. We don't have any
14 knowledge of that. We hadn't any
15 complaints from Mr. Meyer since 2004
16 and we addressed those in 2004 with the
17 railroad.

18 MR. BERRY: Well, Tom, I've given
19 you most of the correspondence between
20 me and Mr. Ford so I think you're
21 pretty well up to speed on what -- some
22 of what I've just been talking but I'll
23 be happy to refer to the deposition
24 topic notices to make sure if I'm
25 staying on message here.

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 were in place and we were committed to do at
3 that time.

4 Q Okay. Well, so what you're saying is
5 it was not the GPA's intention to produce the
6 quality of rail service to anybody by virtue of
7 assigning this or selling or privatizing this
8 rail service to SPTR, is that a fair statement?

9 A That is a fair statement.

10 Q Okay. And then it goes on to say in
11 paragraph 19B that the meaning of the term
12 reasonable needs of it's customers -- that they
13 must provide rail service that meets the quote,
14 reasonable need of its customers, that sounds --

15 A That's the same --

16 Q I think that's pretty much the same?

17 A That's the same answer.

18 Q Okay. Now, let's talk fundamentally
19 about you say that y'all are providing rail
20 service to Mr. Meyer over at his place right
21 now, you said that a little while ago.

22 A We have contracted with and granted an
23 easement agreement to SAPT to operate a railroad
24 and provide the services as we said at the
25 levels that were being provided.

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 BY MR. BERRY:

3 Q Let's just walk through these and we'll
4 go through it that way. There is an easement
5 agreement between GPA and SPTR, correct?

6 A Yes.

7 Q All right. You're familiar with that
8 because that's actually one of the things you
9 worked on --

10 A Yes.

11 Q -- you were involved in. And 8B of
12 that easement agreement says that the railroad
13 must provide efficient and economic - economical
14 railroad transportation services including
15 service to customers along the tracks. Now,
16 you're familiar with that language?

17 A Yes, I am.

18 Q All right. What does that mean, now,
19 first of all, who gets --

20 A It means it goes back to the 1998
21 period and they are -- upon whoever, the
22 railroad would have been that assumed it and I
23 believe this documentation was actually in the
24 request for proposals that they would agree to
25 continue to provide the same level of service as
COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Okay. What I'm having a hard time, I
3 asked the railroad guy --

4 A Uh-huh.

5 Q -- who was here before you, whether he
6 even knew about the lease between the GPA and
7 Mr. Meyer and he said, no, none of my business,
8 don't care, right. And I asked him what rail
9 service meant in the context of the lease
10 agreement and he says, don't know, don't care.
11 I'm not privy to that agreement. I accept no
12 responsibilities, I, the railroad accept no
13 responsibilities under that lease contract. Is
14 that consistent with your understanding of where
15 we stand that that lease has no bearing on -- or
16 any contractual -- doesn't create any
17 contractual obligations as over against the
18 railroad?

19 A There were expected to and are still
20 expected to provide consistent levels of service
21 to the customers at the levels that were being
22 provided and that we were required to provide
23 per, you know, a specific agreement, which was
24 what Mr. Meyers was asked for last August.

25 Q Okay. Well, if I take what your

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1 BERRY - VINSON (DIRECT EXAMINATION)
 2 position is to a logical conclusion, I don't
 3 think either one of us are going to like where
 4 we're going to end up, but what you're saying to
 5 me is if there are specific levels of
 6 performance, i.e., in our case, delivery numbers
 7 per day or week or some other allocation of
 8 time, then you would consider those to be
 9 enforceable obligations over against the
 10 railroad pursuant to the easement contract, is
 11 that what you're saying?

12 A If they were -- yes.

13 Q All right.

14 A If they did exist.

15 Q If they existed. And by virtue of the
 16 fact that they don't exist because we don't have
 17 numbers --

18 A Then they're expected to still provide
 19 as good or better service to the tenants on the
 20 line as are provided to Georgia Ports Authority
 21 for similar services.

22 Q Okay. But if what you're saying is
 23 true which is if you don't have numbers, right,
 24 talking in terms of numbers of deliveries
 25 there's some objective standard that we can hold
 COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)
 2 people accountable to and there clearly isn't in
 3 the lease, it just says rail service --
 4 A Yeah.
 5 Q -- we can both agree on that, all
 6 right. So then if we don't have any numbers,
 7 why doesn't that just drop us down to zero? In
 8 other words, there's no number, therefore there
 9 is none -- I can't enforce the railroad to bring
 10 in three -- you're telling me I can't enforce
 11 the railroad to bring in three, why can I
 12 enforce them to bring in two?

13 A The railroad has been and was
 14 understood under these here that they were to
 15 provided as good of service to the tenants as
 16 they do to the Ports Authority.

17 Q When you say as good as, you mean if
 18 you get two I get two?

19 A Yes, yes.

20 Q Okay. And --

21 A For a similar operation.

22 Q Well, when you say --

23 A Warehouse stuffing operation.

24 Q Well, what you're saying is Kenny is a
 25 similar operation and therefore if you get two,
 COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)
 2 he gets two?

3 A Yes, I would think that that's the
 4 expectation.

5 Q Okay. Now --

6 A In the absence of anything saying that
 7 he's due more than that.

8 Q Okay. And the additional would be if
 9 Rail Link or excuse me, SPTR doesn't bring it in
 10 when it's asked for they shouldn't charge
 11 demurrage, you've already told me about that.
 12 That's another -- that's another deal you've
 13 got.

14 A What deal is that?

15 Q That if you ask for the delivery to be
 16 made, if you ask for, hypothetically, for the
 17 second delivery to be made in a day and they're
 18 too busy to make it, then the least they can do
 19 is not charge you demurrage on those cars that
 20 should have been brought in pursuant to your
 21 request?

22 A Yes and we bring -- and we review
 23 those, we keep our records and we adjust those
 24 invoices out.

25 Q And so we could -- so you've actually
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1 BERRY - VINSON (DIRECT EXAMINATION)
 2 -- this isn't just you talking from what you
 3 think your opinion is, this is actually
 4 represents the past performance of both you and
 5 SPTR as these issues arose?

6 A Yes.

7 Q So you've got a --

8 A On a monthly basis.

9 Q You've got a history of conduct to
 10 support your position here. In other words, I'm
 11 not telling you this is the way it ought to be,
 12 this is the way we've actually done it?

13 A That is the way we have done it.

14 Q Okay. And you would expect Mr. Meyer
 15 to get the same treatment at that level, as
 16 well. In other words, on when demurrage is
 17 calculated and when it is not, that's part --

18 A Many other circumstances.

19 Q Okay. And if it were to come to your
 20 attention that the same level of service was not
 21 being provided to Mr. Meyer either by virtue of
 22 the fact that he's not getting two deliveries on
 23 days when the GPA and he is requesting it or by
 24 virtue of the fact that they're charging
 25 demurrage when they're not bringing deliveries
 COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 when he's requesting them, in other words, the
3 two standards that we've just agreed to, if you
4 find out that Kenny's not being treated the same
5 way as the GPA, how does that impact our lease
6 agreement?

7 A I do not know how that impacts our
8 lease agreement. That would be a matter for the
9 legal folks to look at. Our position would be
10 that we would, again, go back to Rail Link and
11 say, we have continuing things here and we
12 expect these services to be equalized.

13 Q Right.

14 A But to our tenants as well as to us.

15 Q From a business point of view, let's
16 get these standards fixed and you would go to --
17 you feel like you've got the authority and the
18 leverage -- not leverage but the position, visa
19 vi your easement agreement with them to be able
20 to say, we need to get this straightened out?

21 A Yes. Which is what I understood had
22 happened last August 18th or a little after when
23 the personnel came up from Brunswick, I believe,
24 and met with Mr. Meyer.

25 Q Well --

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 A And understandings were reached at that
3 time. Then I next week heard about it was in
4 May.

5 Q Well, it didn't, but that's water under
6 the bridge. I'm a glass half full kind of guy
7 and so I saying, we can't do anything about
8 yesterday but we can sure try to do something
9 about tomorrow and that's why I've been doing a
10 lot of the talking I've been doing here today.

11 It's a little unusual, I'll confess,
12 for a lawyer to be -- instead of just asking you
13 questions. I'm trying to simultaneously get you
14 up to speed on where things are in this lawsuit
15 because I've got you sitting across the table
16 from me and I got your attention, okay, and I
17 want to make sure we walk away from this thing.
18 I want to get you plugged in. You're my best
19 friend because you're the GPA and you got the
20 easement agreement with the railroad and if
21 anybody is in a position to be able to get this
22 service fixed up it's you, I think you can
23 understand what I'm saying and so that's one of
24 my goals here today is to try to get that
25 resolved.

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)

2 (Whereupon, a short break was
3 taken.)

4 BY MR. BERRY:

5 Q I'm going to run back through the rest
6 of these topics in this notice, which I'm sure
7 you've had a chance to see, number three says,
8 all communications between you and defendant,
9 Rail Link and/or SPTR concerning delays in rail
10 car deliveries and pickups from GPA facilities
11 and/or other rail customers service pursuant to
12 the easement agreement, I'll paraphrase that,
13 are there other people complaining about late
14 deliveries or poor service from SPTR out at the
15 Port?

16 A At about the same time, that Mr. Meyer
17 did -- or Ms. Thompson asked for me to sit in on
18 the meeting last August I believe Fuji Oil's
19 name McBaker did creep into that one, also. And
20 we did advise Rail Link that we has been
21 contacted by those two customers alleging subpar
22 service and telling them that we expected them
23 to take care of it.

24 Q Okay. And what response did you get
25 from SPTR or Rail Link or?

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 A Well, at that time we stayed in touch
3 for awhile and they did send people up to
4 evaluate the thing. I think that they did meet
5 at least according to the Rail Link personnel
6 that I talked to, Mr. Eason, I believe. It
7 could have been another at the Vice Presidential
8 level at Rail Link but I believe it was Mr.
9 Eason for the most part that they did come up
10 and meet. They worked through the thing and
11 that service would improve.

12 Frankly at that point we heard no more
13 about it until the -- I believe it was May, it
14 may have been in April that we had a --

15 Q Of 2005?

16 A Of 2005.

17 Q Now, and if I understand it correctly,
18 you previously told me you thought that that
19 meant that they were going to be getting two or
20 three deliveries, they being Fuji I guess, as
21 well?

22 A I'm not sure on Fuji how many --

23 Q But Mr. Meyer it was going to be two to
24 three?

25 A Two to three, yes.

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q Right.

3 A If they could get the third one they
4 would do the third one but they were certainly
5 committed to two.

6 Q Is there any understanding y'all have
7 -- is there any understanding you have about the
8 amount of time that once you put the request
9 into -- GPA puts the request for delivery, what
10 the normal reaction time is?

11 A Normally these deliveries, in my
12 experience and dealings with the railroads and
13 this, you reach a point where there is, for
14 instance, at our warehouses we except at seven
15 o'clock in the morning we will have new cars,
16 they were ordered last night.

17 Q All right.

18 A Place the old cars that were asked to
19 be pulled out or replaced obviously, at that
20 point.

21 Q Right.

22 A You know, at two o'clock in the
23 afternoon or so these train crews are going to
24 other parts of the port working containers part
25 of the day, they're working our warehouses,

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 they're working the pneumonia PCS, they're
3 working the tank cars in and out of Vopac so
4 they do hit certain points that they do make
5 their deliveries --

6 Q Right.

7 A -- you know, to particular customers.

8 Q Right.

9 A And the customers tend to -- and us
10 being a customer, Ports Authority is a
11 customer --

12 Q Right.

13 A -- of this railroad also.

14 Q Right.

15 A And we adapt our schedules around that.
16 We will work rail cars for awhile when the rail
17 card's unloaded we'll go to container stuffing,
18 etc.

19 Q Right.

20 A I'm sure like Mr. Meyer would do, also.

21 Q What you're saying is you got one at
22 seven in the morning to start with pretty much,
23 regular?

24 A Yes.

25 Q And then you get a second one, if you

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 ask for it, but you're flexing on that one
3 because you know that they've got other things
4 they're doing in the middle of day.

5 A Well no, we're not flexing on that. We
6 expect it at the time that our new shift comes
7 on at four to five in the afternoon.

8 Q Okay. And they're pretty dependable
9 about that, usually?

10 A Usually they are dependable on that.

11 Q Okay. Have -- has the -- has SPTR ever
12 refused to make deliveries to or from a GPA
13 facility over a bill dispute?

14 A We have not had a bill dispute.

15 Q Okay. When you say you've never had a
16 bill dispute, does that -- you've already told
17 me that y'all review stuff and every now and
18 then you disagree, for instance, on a demurrage
19 calculation?

20 A Well, we will agree to evaluate and
21 compare notes and say, yes, that was due or that
22 was not due, I don't consider that to be a
23 dispute.

24 Q Okay.

25 A I think that's a clarification.

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 Q What you're saying is you're able to
3 work things out by agreement with them. You
4 bring things to their attention and you say
5 you've got something on a piece of paper here
6 that I don't -- I'm not -- A, we're not going to
7 pay it --

8 A Right.

9 Q -- because B, we disagree with it.
10 Let's talk and we end up agreeing on something?

11 A Yes.

12 Q To your knowledge, has the SPTR ever
13 said, on any such occasion, that by virtue of
14 the fact that you did -- now when y'all don't --
15 when y'all disagree with them about something
16 how does that work, I mean from a process point
17 of view. The bill's on somebody's desk, I guess
18 it's not yours?

19 A No, it's not.

20 Q But somebody's got the job of
21 reviewing?

22 A Right, they will review, say we'll go
23 car by car.

24 Q Right.

25 A And if the demurrage is on there

COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)
2 they'll say, yeah, this time this seems
3 reasonable or --

4 Q Let's say --

5 A These particular cars here, this was on
6 a particular day that we --

7 Q Asked for one and didn't get it?

8 A Yeah, we did want them, you know, out
9 of there and for whatever reason they were not
10 pulled until nine or ten o'clock the next day
11 and demurrage, the clock rolled, I believe it
12 hits at seven o'clock in the morning and so we
13 would say -- we gave clear instructions to be
14 removed and we want this charge removed for
15 these particular cars.

16 Q Now, how does that give and take place,
17 in other words, does that person pickup the
18 phone and call somebody at SPTR to have that
19 conversation or do you have enough knowledge of
20 interaction between the two sides?

21 A I know in general that our people, our
22 operations personnel will go through and compare
23 their sheets and say this charge is questionable
24 here. And then whether they call or it goes up
25 to someone in our traffic department, they will
COASTAL COURT REPORTING & VIDEO SERVICES

1 BERRY - VINSON (DIRECT EXAMINATION)
2 get in touch with SAPT or Rail Link at their
3 billing department and say, you know, this is
4 the circumstance here, we feel that these
5 charges are not due. They will look at it and
6 they will say, we don't have any record. Do you
7 have some evidence of that and if we provide the
8 evidence and it clear and it is right then it is
9 adjusted.

10 Q Okay. So they typically say they don't
11 have any records?

12 A No, I did not say that. I said that we
13 will compare our notes and if we need to go
14 further than that we will provide evidence.

15 Q Okay.

16 A But we do not get into disputes over
17 this and we do not allow these to accumulate
18 over a long period of time.

19 Q Okay. Well, I was going to ask you,
20 has there ever been an occasion when they looked
21 at you and said, you might have had a good
22 argument about a particular demurrage charge but
23 fifteen days have elapsed since the demurrage
24 charge was incurred and you have not submitted,
25 in writing, an objection to us?

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 A I am not aware of that one with our
3 people. I do not have firsthand knowledge but
4 I'm not aware of that happening.

5 Q Okay.

6 A But again, we have always settled our
7 demurrage charges within ten to fifteen days
8 after presentation of the bill.

9 Q You're confident that you're inside a
10 fifteen day window?

11 A From the point that we receive the
12 invoice and we start --

13 Q And you've actually got an agreement
14 with them as to what the amount is going to be
15 paid within the fifteen day window?

16 A I'm paraphrasing that but it is -- we
17 do it on a timely basis.

18 Q Okay. But the reason I'm brining that
19 up is because the tariff that they have sent out
20 says that if you don't get your objections in
21 writing within fifteen days you lose them, are
22 you familiar with that?

23 A No, I'm not aware of that particular
24 --

25 Q And they're using that as --

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1 BERRY - VINSON (DIRECT EXAMINATION)

2 A I don't know.

3 Q -- a defense in this case, they're
4 saying that the failure to submit, in writing,
5 written objections to demurrage charges within
6 fifteen days means you can't argue about it?

7 A Again, we have -- I don't think that we
8 have had that occasion to significantly, you
9 know, violate that or be in -- not in accordance
10 with that, so.

11 Q Well, that's why I'm asking you if you
12 were writing them or calling them?

13 A We will call them. We will fax
14 follow-up.

15 Q If they need it?

16 A If they need it to make the
17 determination.

18 Q But if I understand you correctly, a
19 lot of times you're just working this out over
20 the phone?

21 A That's possible I would assume, yes.

22 MR. BERRY: That's all the
23 questions I have.

24 (Whereupon, the deposition of
25

COASTAL COURT REPORTING & VIDEO SERVICES

BERRY - VINSON (DIRECT EXAMINATION)
William Vinson was concluded at
approximately 5:30 p.m.)

COASTAL COURT REPORTING & VIDEO SERVICES

CERTIFICATE

STATE OF GEORGIA:
CHATHAM COUNTY:

I, Kyle J. Saniga, Court Reporter and
Notary Public in and for the above county and
state, do hereby certify that the foregoing
testimony was taken before me at the time and
place herein-before set forth; that the witness
was by me first duly sworn to testify to the
truth, the whole truth, and nothing but the
truth, that thereupon the foregoing testimony
was later reduced by computer transcription; and
I certify that this is a true and correct
transcript of my stenographic notes so taken.

I further certify that I am not of
counsel to either party, nor interested in the
event of this cause.

Kyle J. Saniga, CCR
Notary Public, B-2038
Savannah, Georgia

COASTAL COURT REPORTING & VIDEO SERVICES

A able 31:16 46:19 47:21 53:2 above-entitled 1:19 absence 32:11,24 44:6 accept 34:15 41:11 41:12 accommodate 26:7 accountable 43:2 accrued 25:6 accumulate 55:17 accumulating 24:9 acquainted 16:21 ACTION 1:11 adapt 51:15 additional 44:8 address 7:12 addressed 38:16 adherence 5:18 adjust 29:6 44:23 adjusted 55:9 administrator 13:5 advise 28:24 48:20 advised 19:11 afford 25:16 afternoon 27:21 50:23 52:7 ago 40:21 agree 14:15 16:15 22:11,14 25:7 30:20 31:2 32:18 34:11 35:18 36:15 39:24 43:5 52:20 agreed 8:3 34:14 38:12 46:3 agreeing 53:10 agreement 1:20 7:17,19 8:6 11:18 15:3,3 19:18 31:19,21 36:5,9 39:5,12 40:23 41:10,11,23 46:6 46:8,19 47:20 48:12 53:3 56:13 agreements 5:19,23 ahead 19:10 ain't 20:14 26:2 allegation 19:3	allegations 20:11 allegedly 38:12 alleging 48:21 allocation 42:7 allow 55:17 amount 28:5 50:8 56:14 analysis 36:3,22 and/or 48:9,11 annotated 3:3 answer 4:22 12:24 14:21 19:8 40:17 anybody 10:14,21 13:9 15:8 40:6 47:21 anymore 8:8 37:5 apparently 18:6 APPEARANCES 2:2 appreciate 34:8 approximately 58:3 April 22:7 30:12 49:14 areas 38:5,9 argue 28:10 34:5 57:6 argument 30:6 55:22 arose 15:11 45:5 arranged 27:22 asked 6:14 11:16 13:4,9,12,16 28:13,14 29:17 30:13 41:3,8,24 44:10 48:17 50:18 54:7 asking 3:20 12:7 15:12 31:6,10,13 33:23 37:11 47:12 57:11 aspects 7:10 assigned 9:12 assigning 40:7 assisted 7:7 assume 3:8 13:14 31:13 57:21 assumed 20:11 39:22	assumptions 24:14 38:2,11 attention 45:20 47:16 53:4 attorney 15:21 17:10 35:17 auditor 5:9,12 6:21 August 1:24 6:12 11:11,12 18:6,14 19:14,15 41:24 46:22 48:18 authority 1:15 5:7 7:2 8:8 10:13,14 13:4 15:14 32:6,9 42:20 43:16 46:17 51:10 Authority's 17:25 authorize 13:19 14:5 available 18:15 AVANNAH 1:14 Avenue 1:23 2:13 avoid 31:17 33:17 aware 8:6 56:2,4,23 awhile 49:3 51:16 B b 2:12 3:5,6 34:11 53:9 back 6:16 20:8 23:15 34:4,7 36:9 39:20 46:10 48:5 backing 20:21 backup 28:23,23 backwards 36:12 badger 33:6 Bankruptcy 9:15 basis 5:24 6:2,3 26:20 30:25 45:8 56:17 bearing 41:15 bears 16:24 began 11:7 begging 33:15 behalf 8:18 believe 6:11 10:14 17:22 21:5 24:23 24:24 27:12 29:24 33:23 34:3 39:23	46:23 48:18 49:6 49:8,13 54:11 Berry 2:4,22 3:1,6 3:11,16,17 4:1,15 4:19,24 5:1 6:1,13 7:1 8:1 9:1,12,16 9:18 10:1 11:1 12:1 13:1,25 14:1 15:1 16:1 17:1 18:1 19:1,9 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1,5 32:1 33:1 34:1 35:1 36:1 37:1,17,21 37:24 38:1,3,8,18 39:1,2 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1,4 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1,22 58:1 best 12:21 47:18 better 20:13 32:5 42:19 bill 29:6 52:13,14 52:16 56:8 billing 55:3 bills 20:22,25 25:23 Billy 19:22 bill's 53:17 bit 26:8,21 blockage 29:5 Boulevard 2:9 bound 5:12 Box 2:5,13 break 48:2 bridge 47:6 bring 29:18 33:16 33:20 34:11 43:9 43:11,12 44:9,22 53:4 bringing 29:12 45:25 brining 56:18 brought 16:7 20:20 29:10 44:20	Brunswick 46:23 business 11:9 18:20 22:12 23:6 25:13 25:15 33:17 34:7 41:7 46:15 busy 44:18 B-2038 59:24 C c 3:4,5 59:2,2 calculated 36:13 45:17 calculation 52:19 calculations 35:13 35:21 call 27:4 29:4 54:18 54:24 57:13 called 7:12 calling 57:12 Campbell 2:8 36:11 capacity 5:8 Capital 1:6 3:18 6:6 7:23 8:3,7 9:13,20,21 15:15 20:8 23:5 car 29:3,4,5,7 48:10 53:23,23 card's 51:17 care 20:11 41:8,10 48:23 Cargo 1:6 3:18 6:6 7:23 8:4,7 9:13,20 9:21 15:15 20:8 23:5 carry 29:24 cars 20:19 23:10,13 23:14,19,23 24:3 24:8,9,9,12,15,17 25:5,21 27:22,23 29:8 33:16,21 44:19 50:15,18 51:3,16 54:5,15 case 6:6 7:17 34:2 42:6 57:3 category 20:14 cause 1:19 23:6 59:20 caused 24:13
--	--	---	--	--

CCR 59:23	27:25 28:25 29:25	48:21	crews 50:23	35:14,19 36:10,16
certain 51:4	30:25 31:25 32:25	container 51:17	critical 33:12 34:10	36:24 37:11 42:24
certainly 33:3 50:4	33:25 34:25 35:25	containers 50:24	current 13:5 19:23	45:22,25 48:10,14
Certified 1:21	36:25 37:25 38:25	context 8:5 41:9	currently 5:4 10:21	49:20 50:11 51:5
certify 59:9,16,18	39:25 40:25 41:25	continue 39:25	custom 15:18 16:9	52:12
chance 48:7	42:25 43:25 44:25	continuing 46:11	customarily 13:15	delivery 29:9 30:13
change 14:12 15:8	45:25 46:25 47:25	contract 14:17	customer 51:10,11	30:14,15 35:7
22:21 27:20	48:25 49:25 50:25	15:13,25 16:2,12	customers 31:24	36:12 37:4 42:6
changed 14:10,23	51:25 52:25 53:25	16:18,19,25 17:5	33:18 39:15 40:12	44:15,17 50:9
15:2,7,13 24:16	54:25 55:25 56:25	41:13 42:10	40:14 41:21 48:11	demand 27:18
changes 18:7	57:25 58:25 59:25	contracted 40:22	48:21 51:7,9	demurrage 15:11
charge 27:6 35:12	come 20:8 27:24	contracts 15:20,22		20:21,25 21:5,6,9
44:10,19 54:14,23	28:15 45:19 49:9	contractual 41:16	D	21:15,23 22:4,14
55:22,24	comes 29:3 52:6	41:17	d 2:15 3:4	23:8,22 25:3,6,17
charged 21:24 22:5	coming 24:15,17	conversation 54:19	daily 12:13	25:20,23 26:3,4
22:9 32:10	25:23	conversations 8:11	date 36:24	26:10,10 29:2,6
charges 33:14 55:5	commencing 1:24	9:4 10:6	dates 19:15	29:11,19,21 30:16
56:7 57:5	comments 37:20	correct 22:16 25:10	day 1:24 12:23	30:22 31:17 32:10
charging 21:10	committed 40:2	29:13 39:5 59:16	13:16 14:17,25	33:14,17 34:6
29:19,20 30:16,22	50:5	correctly 49:17	15:9 17:16,19,24	35:21 36:13,15,23
30:23 37:12 45:24	communicated	57:18	18:5 19:20 27:14	37:13 44:11,19
CHATHAM 1:2	30:2,3	correspondence	32:8,10 36:10,12	45:16,25 52:18
59:5	communications	38:19	36:16 37:5 42:7	53:25 54:11 55:22
checked 21:21	48:8	counsel 2:2 59:19	44:17 50:25 52:4	55:23 56:7 57:5
checking 18:20	compare 52:21	county 1:2 59:5,8	54:6,10 56:10,15	department 54:25
circumstance 22:16	54:22 55:13	couple 24:14	days 17:16 20:17	55:3
22:17 30:23 31:17	complaining 48:13	court 1:2,21,25	20:18 33:11,11	departure 13:19
55:4	complaints 38:15	3:25 4:7,9,23,25	35:14 45:23 55:23	14:5
circumstances	computer 59:15	5:25 6:25 7:25	56:7,21 57:6	dependable 52:8,10
24:13 45:18	conceding 32:15	8:25 9:25 10:25	day-to-day 6:3 7:9	deposition 1:18 3:7
CIVIL 1:11	concept 16:21	11:25 12:25 13:25	35:12	4:10 33:8 38:23
clarification 9:8	36:20	14:25 15:25 16:25	deal 5:15 6:2 27:4	57:24
52:25	concerned 17:11	17:25 18:25 19:25	44:12,14	descriptive 7:21
clear 37:3 54:13	concerning 15:11	20:25 21:25 22:25	dealings 50:12	designated 3:8 38:6
55:8	48:9	23:25 24:25 25:25	decision 26:3	desk 53:17
clearly 43:2	concluded 58:2	26:25 27:25 28:25	defendant 2:7,11	destined 24:18
client 31:12	conclusion 42:2	29:25 30:25 31:25	48:8	determination
clock 54:11	conduct 45:9	32:25 33:25 34:25	Defendants 1:16	57:17
COASCERTIFI...	confess 47:11	35:25 36:25 37:25	defense 57:3	determine 8:11
2:25	confident 56:9	38:25 39:25 40:25	defined 17:6	27:16 33:4
COASTAL 1:25	connection 15:19	41:25 42:25 43:25	definition 8:2,8	difference 8:25
3:25 4:25 5:25	16:9	44:25 45:25 46:25	definitive 13:6	10:10 12:15 17:17
6:25 7:25 8:25	consequence 20:19	47:25 48:25 49:25	definitively 13:3	different 19:25
9:25 10:25 11:25	consider 16:17 42:8	50:25 51:25 52:25	delays 48:9	21:7 23:24
12:25 13:25 14:25	52:22	53:25 54:25 55:25	deliveries 9:5 10:8	differently 34:21
15:25 16:25 17:25	consideration 10:4	56:25 57:25 58:25	12:23 13:15 17:16	DIRECT 2:22 3:1
18:25 19:25 20:25	consistent 41:14,20	59:7,25	17:19,23 18:5,9,9	3:15 4:1 5:1 6:1
21:25 22:25 23:25	consistently 18:13	create 41:16	18:11,13 20:18	7:1 8:1 9:1 10:1
24:25 25:25 26:25	contacted 19:2	creep 48:19	32:8 33:10 34:12	11:1 12:1 13:1

14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 Director 7:5 disagree 16:15 21:19,20 52:18 53:9,15 disbelieve 24:22 33:24 Disclosure 3:2 discussions 11:23 17:22 dispatch 24:11 dispute 37:2,3 52:13,14,16,23 disputes 55:16 documentation 39:23 doing 38:13 47:9 47:10 52:4 dollars 21:2,7,15 22:4,13 23:7 25:17,19,23 26:14 27:9 33:13 37:2 DRAUGHN 2:12 drop 43:7 dropped 20:16 due 36:16 44:7 52:21,22 55:5 duly 3:13 59:12 dumping 24:12	easier 4:7 easiest 12:24 Eason 19:22 49:6,9 East 1:23 2:13 economic 39:13 economical 39:13 efficient 39:13 effort 8:11,15,21 either 16:15 28:14 42:3 45:21 59:19 elapsed 55:23 elected 7:2 employed 5:4,6 empty 27:22 endeavor 19:19 enforce 43:9,10,12 enforceable 42:9 English 5:11 enter 17:12 entered 8:14 9:10 entire 13:21 equal 32:12,13,14 32:15 equalized 46:12 equation 17:13 ESQUIRE 2:4,8,12 established 34:22 evaluate 49:4 52:20 evaluating 5:17 event 29:7 35:11 59:20 evidence 11:16 12:18 55:7,8,14 evolved 11:3 EXAMINATION 2:22 3:1,15 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1	45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 excess 17:25 excuse 44:9 exist 42:14,16 existed 42:15 expect 45:14 46:12 52:6 expectation 44:4 expected 41:19,20 42:18 48:22 experience 50:12 explain 30:21 36:8 explanation 22:3 31:16 35:17 expressions 29:24	F F 59:2 facilities 48:10 facility 9:5 10:9 11:7 20:21 24:4 52:13 fact 17:15 18:20 26:9 32:2 42:16 45:22,24 53:14 facts 35:6 failure 57:4 fair 18:14 40:8,9 false 18:2,22 familiar 5:14 7:23 7:25 16:8 39:7,16 56:22 far 6:16 17:11 30:17 fast 23:21 fault 22:10 23:4 25:7 fax 29:21,23 30:4,5 57:13 faxes 29:22 February 22:6 30:11 feel 46:17 55:4 fifteen 55:23 56:7 56:10,15,21 57:6	fifty 21:2,6,12,15 22:4,13 23:7 25:16,19,22 26:12 33:13 37:6 figure 32:16 filed 3:19 files 13:7 Finance 7:5 find 10:23 21:22 34:2 46:4 fine 4:5,18 37:17 finish 13:23 19:7 finished 13:22 first 3:13 6:4 12:9 13:11 21:3,4 28:14 39:19 59:12 firsthand 56:3 five 52:7 fix 25:9,25 34:24 fixed 46:16 47:22 flexing 52:2,5 Florida 2:10 folks 46:9 follow 16:13 following 9:14 follows 3:14 follow-up 57:14 Ford 2:8,8 36:11 38:20 foregoing 59:9,14 form 4:20 formalities 4:11 forth 35:14 59:11 forty 21:2 26:14 forward 34:12 found 13:7 four 27:20 36:25 37:5 52:7 frame 19:14 Frankly 49:12 friend 47:19 front 4:16 Fuji 48:18 49:20,22 full 5:2 28:7 47:6 fundamentally 40:18 further 20:10 55:14 59:18	G gain 11:13 16:10 general 54:21 Georgia 1:2,15 2:5 2:14 5:6 32:5 42:20 59:4,25 getting 17:18,19 18:4 20:25 30:15 32:10 34:19 45:22 49:19 give 5:2 19:19,20 24:14 35:24 54:16 given 20:6 38:18 glass 47:6 go 6:15 10:23 19:10 36:9 39:4 46:10 46:16 51:17 53:22 54:22 55:13 goals 47:24 goes 39:20 40:10 54:24 going 5:10 10:20 16:14,16 22:23 23:22 25:25 26:2 26:4,5,5 27:17,19 30:24 34:12 35:24 42:3,4 48:5 49:19 49:23 50:23 53:6 55:19 56:14 good 36:14 42:19 43:15,17 55:21 gotten 30:14 34:14 GPA 3:7,19 6:15 7:22 8:3,12,19 9:2 10:7 12:10 13:18 14:11 25:19,22 27:13 30:23 31:16 31:20,23 33:19 34:24 39:5 41:6 45:23 46:5 47:19 48:10 50:9 52:12 GPA's 10:4 34:21 40:5 granted 40:22 ground 4:4 guess 3:22 5:24 6:14 10:17 20:22 49:20 53:17 guy 41:3 47:6
---	---	--	--	--	---

guys 37:10	improve 49:11	23:3,5 24:10,12	46:5,8	37:10,19,22,25
H	include 5:19	25:2,4 29:17,21	leases 6:3	man 20:6
Habersham 2:4	including 39:14	31:18 32:8 34:4	legal 17:8 46:9	management 7:7
half 47:6	INCORPORAT...	34:13 35:9,12,20	length 4:3 28:7	manner 4:10
handle 26:20	1:6	43:24	let's 36:11 39:3	man's 18:23
handled 8:18	increase 24:17	Kenny's 24:18	40:18 46:15 53:10	March 22:6 30:11
happen 23:25 25:8	incurred 26:13	32:10 33:10 37:11	54:4	matter 26:9 46:8
28:16	55:24	46:4	level 7:14 11:14,23	matters 4:22
happened 22:11,19	incurring 22:13	kind 11:6 22:15	13:10,20 14:5,12	McBaker 48:19
22:20,25 28:25	Indicated 19:6	32:20 47:6	14:16,18,23 21:8	McCarthy 35:9
46:22	information 18:3	kinds 10:22	35:19 39:25 45:15	mean 12:21 16:11
happening 20:14	20:6 35:4	knew 41:6	45:20 49:8	18:19 27:4 31:7
26:2 32:21,21	infrequently 28:20	know 3:22,25 5:13	levels 16:4 17:24,25	31:15,18 32:7
56:4	28:21	8:2,17 10:21,24	32:4 40:25 41:20	34:18 39:18 43:17
happens 28:11,22	inside 56:9	11:17 12:4,13,18	41:21 42:5	53:16
happy 38:23	insist 32:3	13:6,17 14:2,21	leverage 46:18,18	meaning 8:4 40:11
hard 34:3 41:2	instance 50:14	15:20 18:23 20:10	line 42:20	means 15:7,19
hear 37:9	52:18	21:8,12 22:21	Link 1:14 3:19	39:20 57:6
heard 16:22 47:3	instructions 54:13	24:12,13,15 26:21	17:22 18:18 19:2	meant 41:9 49:19
49:12	intention 40:5	27:10 28:13 29:4	19:12,22 23:15	measure 32:18
hearing 25:12	interaction 54:20	29:17 31:14,18	26:20 32:3 35:20	meet 33:19 49:4,10
30:18	interested 30:10	33:6,7,9 34:16	35:23 44:9 46:10	meeting 11:12
help 5:10	59:19	35:8,15 36:23	48:9,20,25 49:5,8	32:19 48:18
herein-before	internally 5:18	41:10,23 46:7	55:2	meets 40:13
59:11	investigation 21:22	50:22 51:7 52:3	little 26:8,21 40:21	message 38:25
high 20:23	invoice 56:12	54:8,21 55:3 57:2	46:22 47:11	met 6:7 46:24
history 45:9	invoices 44:24	57:9	locate 8:22	method 4:9
hit 51:4	involve 5:23	knowledge 11:10	logical 42:2	methodology 37:7
hits 54:12	involved 6:5 10:15	31:3 38:14 53:12	long 6:15,16,20	Meyer 6:8,9,10
hold 13:21,21	39:11	54:19 56:3	23:19 24:3 55:18	8:12,19 9:4 10:6
42:25	issue 6:6	known 10:11	look 12:17 27:7	11:7,13,16 13:19
holding 23:19	issues 5:22 7:12	Kyle 1:20 59:7,23	35:18,21,22 36:12	15:15 18:4,12,25
hope 9:19	15:11 21:5,6		46:9 55:5	21:10 22:5,13
hour 1:25 27:9	32:25 45:5	L	looked 12:21 55:20	30:22 38:15 40:20
hourly 26:19	i.e 42:6	language 15:7	lose 56:21	41:7 45:14,21
hours 26:24	J	39:16	lot 23:24 37:6,20,22	46:24 48:16 49:23
hundred 21:14	J 1:20 59:7,23	late 20:13 48:13	37:25 47:10 57:19	51:20
22:3 23:7 27:9	Jacksonville 2:10	Law 1:22	lunch 27:22	Meyers 20:20
37:6	January 14:3,17,19	lawsuit 3:18 47:14	M	41:24
hypothetically	20:15,15 36:24	lawyer 36:10 47:12	magnitude 21:9,23	middle 52:4
44:16	job 20:2 33:20 34:3	learn 21:3	Mahoney 1:22 2:12	Miller 2:8
I	53:20	learned 21:4	3:10 4:13,18 9:7	Miriam 6:11 13:4
idea 22:24 23:2	judge 13:3	lease 5:19,23 6:5	9:14,17 13:23	mischaracterizat...
36:14	June 14:4,20 36:25	7:16,18,19 8:5,9	19:7 30:24 37:14	37:15
identify 8:22	K	8:14,18 9:3,9,20	37:18,22,25 38:4	miscommunicate
imagine 33:16	keep 26:2 44:23	10:5,9 11:8,9,18	38:10	3:24
impact 10:3 46:5	Kenny 6:7,7 8:19	12:9,17 13:11	major 5:11	miscommunicati...
impacts 46:7	14:12 16:7 19:13	14:7,25 32:19,20	making 31:12	28:18
		41:6,9,13,15 43:3		month 21:2,7,10,13

21:14 22:5,14 25:17,20,24 26:12 26:14 30:11 33:13 monthly 45:8 months 14:3 26:13 morning 27:23 50:15 51:22 54:12	numbers 42:6,17 42:23,24 43:6	ones 18:24 20:17 26:18 opening 2:19 11:8 operate 40:23 operating 25:15 operation 33:10 43:21,23,25 operational 5:9,11 6:21 7:10 operations 5:15,16 6:24 7:4 11:10 54:22 opinion 45:3 opportunity 6:4 opposed 31:23 order 21:9,23 ordered 50:16 ordinary 26:18 original 9:9 ought 37:10 45:11 outside 26:24 overtime 26:5 o'clock 27:21 50:15 50:22 54:10,12 O.C.G.A 3:3	paying 34:15,16,19 payment 18:7 32:24 PCS 51:2 people 13:3 43:2 48:13 49:3 54:21 56:3 perform 16:20 performance 14:18 15:19 17:7,12 42:6 45:4 performed 14:16 performing 16:17 period 18:3 21:14 22:6 30:9,11 33:12,12 34:10 39:21 55:18 person 19:4,21 54:17 personally 8:17 personnel 17:23 18:18 19:13 46:23 49:5 54:22 phone 54:18 57:20 pickup 54:17 pickups 48:10 piece 53:5 place 8:12 23:4 40:2,20 50:18 54:16 59:11 placement 27:20 plain 18:2 Plaintiff 1:7 2:3 please 5:2 plugged 47:18 plus 21:13 33:13 pneumonia 51:2 point 8:16 10:17 35:3 46:15 49:12 50:13,20 53:16 56:11 points 51:4 policies 5:17 poor 48:14 port 1:14 5:15,16 6:24,25 10:14,22 17:25 20:20 24:16 24:18 32:9 48:15 50:24	Ports 1:15 5:6 8:7 10:13 13:4 15:14 32:5 42:20 43:16 51:10 position 19:25 42:2 45:10 46:9,18 47:21 possible 57:21 Post 2:5,13 practical 31:15 practice 13:20 15:18 22:12 practices 16:9 preceding 14:7 precise 8:8 prepared 38:5 presentation 56:8 presented 4:23 President 19:22,23 Presidential 49:7 presume 17:8 pretty 38:21 40:16 51:22 52:8 previously 14:6 30:14 49:18 primarily 5:15,16 prior 7:10 privatization 7:11 privatize 7:4 privatizing 40:7 privy 41:11 problem 25:25 34:25 37:8 procedures 5:17 process 7:6 53:16 produce 35:16 40:5 produced 3:13 proposal 7:6 proposals 39:24 propose 4:8 provide 7:22 15:4 39:13,25 40:13,24 41:20,22 42:18 55:7,14 provided 11:19 14:6 19:11 32:5 40:25 41:22 42:20 43:15 45:21 providing 12:10
N N 2:15 name 5:2 18:19,23 48:19 name's 3:17 nature 8:13 necessarily 17:3 need 5:12 12:23 25:9 26:21 32:16 32:17 35:5 40:14 46:20 55:13 57:15 57:16 needed 5:24 6:2 needs 40:12 negotiating 10:7 negotiations 8:18 8:23 9:3 10:16,23 11:19 never 11:19 20:13 22:19,19 28:14 34:14 52:15 new 27:23 50:15 52:6 night 50:16 56:23 nine 54:10 normal 22:12 26:24 50:10 normally 27:13 50:11 notary 1:21 4:16 59:8,24 notes 52:21 55:13 59:17 nothing's 14:23,25 notice 1:20 3:7,9 28:25 33:25 38:7 48:6 notices 38:24 number 1:11 9:4 10:8 18:9 34:4,6 43:8 48:7	O O 5:3 object 30:24 37:14 objection 55:25 objections 4:20 56:20 57:5 objective 42:25 obligations 10:5 14:24 32:19,20 33:19 41:17 42:9 obviously 4:6 50:19 occasion 7:11 53:13 55:20 57:8 occasional 28:18 occasions 28:12,21 occur 22:22 23:22 28:19,22 occurred 14:2 October 6:19 office 2:5,13 4:17 30:3 Offices 1:22 Oglethorpe 1:23 2:13 Oil's 48:18 okay 3:11 6:14,23 7:9 8:10 9:17 10:2,17 11:5,21 12:2 14:15 15:17 16:3 17:9 19:10 21:6,12,15 22:2 22:23 23:12 24:16 24:25 26:15 28:11 29:15 30:2,12,15 30:20 31:10,19,22 31:25 34:5,6,12 34:19 35:6 36:2,4 36:10,16 37:8 40:4,10,18 41:2 41:25 42:22 43:20 44:5,8 45:14,19 47:16 48:24 52:8 52:11,15,24 55:10 55:15,19 56:5,18 old 50:18 once 50:8	P P 2:8 36:11 PAGE 2:16 paid 26:10 56:15 paper 53:5 paragraph 40:11 paraphrase 48:12 paraphrasing 56:16 part 11:18 45:17 49:9 50:24 particular 19:15 29:7,7 51:7 54:5,6 54:15 55:22 56:23 particularly 20:15 28:6 30:9 parties 16:17,24 17:7 parts 50:24 party 59:19 pay 25:16,19 26:4,5 26:6,9,16,19 29:10 36:15 53:7		

40:19 provision 7:24,25 Public 1:22 59:8,24 pull 29:24 pulled 27:23 50:19 54:10 purposes 31:14 pursuant 1:20 3:2 3:7 42:10 44:20 48:11 pursue 33:4 put 13:8 50:8 puts 5:12 50:9 putting 7:6 33:25 P.A 2:8 P.C 2:12 p.m 1:25 58:3	55:2 railroad 1:15 7:10 21:10 34:5 35:7 38:12,17 39:12,14 39:22 40:23 41:3 41:12,18 42:10 43:9,11,13 47:20 51:13 railroads 50:12 range 27:9 Ranitz 1:22 2:12 rarely 30:9 reach 50:13 reached 47:2 reaction 50:10 read 4:11 15:3 reading 4:14 reason 13:17 21:18 21:20 24:22,23 29:20 31:15 54:9 56:18 reasonable 40:12 40:14 54:3 receive 10:9 11:7 30:5 56:11 received 12:8 13:11 13:15 18:12 receives 32:8,9 receiving 11:14 32:23 record 37:19 55:6 records 35:8,15,16 35:18,23 36:4,4 44:23 55:11 rectify 29:2 reduced 59:15 reducing 34:17 reduction 34:18,20 refer 38:23 reference 7:20 referring 26:23 refused 52:12 regarding 8:13 regards 28:22 regular 51:23 related 16:4 relationship 32:2 released 23:15 relevance 16:25	relied 20:8 REMARKS 2:19 remember 19:14 remind 29:3 removed 29:5 54:14,14 renigs 38:13 rent 34:16,18,19 repeat 3:25 rephrase 4:2 replaced 50:19 reporter 1:21 4:8,9 59:7 REPORTING 1:25 3:25 4:25 5:25 6:25 7:25 8:25 9:25 10:25 11:25 12:25 13:25 14:25 15:25 16:25 17:25 18:25 19:25 20:25 21:25 22:25 23:25 24:25 25:25 26:25 27:25 28:25 29:25 30:25 31:25 32:25 33:25 34:25 35:25 36:25 37:25 38:25 39:25 40:25 41:25 42:25 43:25 44:25 45:25 46:25 47:25 48:25 49:25 50:25 51:25 52:25 53:25 54:25 55:25 56:25 57:25 58:25 59:25 represent 3:18 22:15 representative 10:7 represents 45:4 request 39:24 44:21 50:8,9 requested 29:12 requesting 45:23 46:2 require 17:2 required 14:16,19 41:22 requires 16:19 reserve 4:13,19 resolved 47:25 respond 38:5,10	response 48:24 responses 4:7 responsibilities 41:12,13 responsible 8:23 9:2 25:2,5 responsiveness 4:21 rest 48:5 resume 6:16 review 15:22 44:22 52:17 53:22 reviewed 15:25 16:2 reviewing 53:21 right 7:16 9:16,25 10:12 12:6 13:8 13:14,16 16:6,14 17:6 18:21,22 20:4,14 21:8,18 22:20,20 24:7 25:9,24 26:2 27:3 28:9,23 33:2,24 34:14 35:4,11 39:7,18 40:20 41:8 42:13,23 43:6 46:13 50:2 50:17,21 51:6,8 51:12,14,19 53:8 53:22,24 55:8 Riverplace 2:9 rolled 54:11 Ron 3:17 9:7 19:7 37:18 RONALD 2:4 rule 37:5 rules 4:4 run 33:18 35:13 48:5 running 34:4,7	Savannah 2:5,14 19:13 24:18 59:25 Savannah,Georgia 1:23 saying 5:25 11:22 12:25 18:3 21:16 23:18 24:20 28:8 30:18 34:22,23,24 37:9,10 40:4 42:4 42:11,22 43:24 44:6 47:7,23 51:21 53:2 57:4 says 7:22 12:22 15:4 34:13 37:16 39:12 41:10 43:3 48:7 56:20 schedule 20:20 schedules 51:15 searched 13:7 second 27:19,25 28:15 44:17 51:25 see 11:24 12:19 25:8 48:7 seeking 21:14 seen 7:16,19 selection 7:8 Sell 7:3 selling 40:7 send 19:12 29:22 30:4,6 49:3 sends 30:5 sense 22:18 23:9 sent 4:17 29:21 56:19 series 3:20 serve 33:18 service 7:21,22 8:4 8:13 11:6,14,23 12:8,11,13 13:10 13:20 14:6,13,16 15:4 16:4 17:24 17:25 19:3 20:16 32:4,23,23 34:13 34:15,17,20 39:15 39:25 40:6,8,13 40:20 41:9,20 42:19 43:3,15 45:20 47:22 48:11 48:14,22 49:11
Q qualifications 4:9 quality 40:6 question 3:25 4:21 10:3 12:2,3,25 13:12,22,24 14:8 14:22 15:6 16:13 17:14 25:14 26:11 31:14 35:2 questionable 54:23 questions 3:20 47:13 57:23 quick 25:24 quickest 12:24 quo 14:10 quote 40:13	R R 59:2 racked 33:14 rail 1:14 3:19 6:24 7:4,12,20,22 8:4,7 8:13 10:8 11:6 12:10 15:4 17:22 18:18 19:2,12,22 23:15 25:21 26:20 27:12 32:2,23 34:17,20 35:20,23 40:6,8,13,19 41:8 43:3 44:9 46:10 48:9,9,11,20,25 49:5,8 51:16,16	S Saniga 1:21 59:7 59:23 SAPT 23:17 40:23 55:2 sat 25:5 satisfy 35:5,19 Saturday 27:2		

services 1:25 3:25 4:25 5:25 6:25 7:25 8:25 9:25 10:25 11:25 12:25 13:25 14:25 15:25 16:25 17:25 18:15 18:25 19:25 20:25 21:25 22:25 23:25 24:25 25:25 26:25 27:25 28:25 29:25 30:25 31:25 32:25 33:25 34:25 35:25 36:25 37:25 38:25 39:14,25 40:24,25 41:25 42:21,25 43:25 44:25 45:25 46:12,25 47:25 48:25 49:25 50:25 51:25 52:25 53:25 54:25 55:25 56:25 57:25 58:25 59:25 set 59:11 settled 56:6 seven 50:14 51:22 54:12 sheet 29:25 sheets 54:23 shift 27:19,20,25 52:6 shipments 29:18 30:7 shippers 24:11 shopping 7:7 short 48:2 show 35:13 shown 8:9 sides 54:20 sidings 28:7 siding's 28:6 significant 8:15 significantly 57:8 signing 4:14 11:8 similar 30:23 42:21 43:21,25 simultaneously 47:13 sing 4:12 sir 5:5 16:13,22 19:4 24:6 25:21	sit 23:23 48:17 sitting 17:11 47:15 situation 25:9 solution 34:2 solving 37:8 somebody 5:13 14:11 54:18 somebody's 53:17 53:20 somewhat 5:14 19:15 soon 28:25 sound 28:5 sounds 28:9 36:14 40:14 special 26:6,16,17 26:25 27:5 31:19 31:21 specific 9:3 10:6 16:10 35:15 41:23 42:5 specifically 14:3 27:10 speculate 3:23 speed 38:21 47:14 spike 24:17 SPTR 3:19 39:5 40:8 44:9 45:5 48:9,14,25 52:11 53:12 54:18 stand 41:15 standard 36:12 42:25 standards 46:3,16 standing 13:20 start 51:22 56:12 started 11:3 20:21 state 1:2 59:4,9 statement 31:11 40:8,9 statements 37:23 status 14:10 stay 4:3 stayed 49:2 staying 24:25 38:25 stenographic 59:17 Steve 35:8 sticking 18:8 stipulate 4:8	STIPULATIONS 2:19 stop 3:21 straightened 46:20 Street 2:4 stuff 35:5 52:17 stuffing 43:23 51:17 submit 57:4 submitted 55:24 subpar 48:21 suddenly 37:7 sufficient 23:10 suitable 4:4 Suite 2:9 Sunday 27:2 SUPERIOR 1:2 support 11:18 12:18 45:10 sure 11:21 29:23 38:24 47:8,17 48:6 49:22 51:20 suspect 27:8 28:17 35:22 switch 27:5 switches 26:17,25 27:13 switching 26:6,6,16 sworn 3:13 59:12	28:12 telling 15:24 16:18 18:21,22 23:25 24:4,21 33:24 34:9,23 43:10 45:11 48:22 ten 12:9 13:11 14:7 16:24 17:16 20:24 30:14 54:10 56:7 tenants 5:20 32:3 42:19 43:15 46:14 tend 51:9 term 8:4 15:18,18 16:8,11 40:11 terminal 1:14 27:8 terms 18:7 23:13 32:24 42:24 testified 3:14 testify 59:12 testimony 59:10,14 they'd 36:23 thing 11:2 32:4 34:3 36:5 47:17 49:4,10 things 21:8 32:12 32:12,14,15,20 38:11 39:8 46:11 47:14 52:3 53:3,4 think 3:24 7:21 12:20 15:4,24 16:19,23 17:5 18:4 22:11 23:9 23:18 25:11 28:8 34:8 38:20 40:16 42:3 44:3 45:3 47:22 49:4 52:25 57:7 third 50:3,4 thirty 26:14 Thirty-two 6:17,18 Thompson 6:11 13:5 48:17 thought 36:5,8 49:18 thousand 20:23 21:2,7,13,15 22:4 22:13 23:7 25:16 25:19,22 26:12,14 33:13 36:25 37:5	37:6 three 13:15 17:16 17:19,23 18:5,11 18:13,16 19:20 21:14 22:5 27:20 30:9,11 33:9 34:11 36:9,12,16 36:24 37:4 43:10 43:11 48:7 49:20 49:24,25 throw 16:14,16 time 8:14 10:16 12:10 18:3 19:14 20:2 22:6,22 26:18,22 28:2 29:11 30:10 33:12 33:13 34:11 40:3 41:2 42:8 47:3 48:16 49:2 50:8 50:10 52:6 54:2 55:18 59:10 timely 56:17 times 18:16 30:12 57:19 tire 34:23 today 5:21 15:9 17:12 18:14 33:7 35:6 47:10,24 told 12:3 18:17 21:17 30:4 35:5 44:11 49:18 52:16 Tom 38:18 tomorrow 47:9 topic 38:24 topics 3:9 48:6 touch 49:2 55:2 tracks 39:15 traffic 54:25 train 50:23 transcript 4:16 59:17 transcription 59:15 transportation 39:14 treated 34:21 46:4 treatment 45:15 trick 33:5 true 30:21 31:3,8 42:23 59:16
---	--	---	---	---

truer 23:9 truth 59:13,13,14 try 4:2 8:21 19:20 47:8,24 trying 10:18 16:10 33:5,6,25 36:17 47:13 turn 24:3 turning 23:21 twenty-three 6:22 twenty-two 6:22 28:2,4,8 two 17:23 18:4,11 18:13,15 19:19 20:23 21:7 27:9 27:15,17 30:8 32:9 43:12,18,18 43:25 44:2 45:22 46:3 48:21 49:19 49:23,25 50:5,22 54:20 typically 10:22 55:10 U Uh-huh 41:4 understand 3:21,25 9:19 11:21 14:8 15:10,17 17:14,18 18:12 19:12,24 21:16 22:2,8 24:19 25:17 30:17 36:17,18,20 47:23 49:17 57:18 understanding 11:6,13 12:7,12 16:11 17:20,21 41:14 50:6,7 understandings 47:2 understood 16:25 43:14 46:21 unloaded 23:14 51:17 unreasonable 28:5 untrue 31:7,9 unusual 22:15,18 22:20 47:11 unwilling 29:10	use 36:11 usually 52:9,10 V vague 17:5,6 various 5:16 verbal 8:11 verbalize 4:6 verify 20:5 vi 46:19 Vice 49:7 VIDEO 1:25 3:25 4:25 5:25 6:25 7:25 8:25 9:25 10:25 11:25 12:25 13:25 14:25 15:25 16:25 17:25 18:25 19:25 20:25 21:25 22:25 23:25 24:25 25:25 26:25 27:25 28:25 29:25 30:25 31:25 32:25 33:25 34:25 35:25 36:25 37:25 38:25 39:25 40:25 41:25 42:25 43:25 44:25 45:25 46:25 47:25 48:25 49:25 50:25 51:25 52:25 53:25 54:25 55:25 56:25 57:25 58:25 59:25 view 46:15 53:17 Vinson 1:18 3:1,12 3:17 4:1 5:1,3 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1	53:1 54:1 55:1 56:1 57:1 58:1,2 Vinson's 3:8 violate 57:9 virtue 16:19 40:6 42:15 45:21,24 53:13 visa 46:18 visit 19:13 visited 18:25 volume 12:19 24:15 24:25 Vopac 51:3 vs 1:11 V-i-n-s-o-n 5:3 W Wainer 2:8 waive 4:10 walk 39:3 47:17 want 3:22,23 18:22 25:8 26:18,25,25 27:2,5 33:7,9 35:3 37:2 47:17,18 54:8,14 wanted 11:24 warehouse 23:20 24:18 28:6 43:23 warehouses 50:14 50:25 wasn't 12:2 water 47:5 wave 4:3 way 5:12 12:21,24 13:2,9 31:2 39:4 45:11,12,13 46:5 ways 23:25 week 18:16 42:7 47:3 went 20:22 36:22 we'll 4:2,13,19 39:3 51:17 53:22 we're 5:20 18:8,20 25:15,25 26:4,4,5 27:18 29:20 30:10 35:24 36:3,17 38:4 42:4 52:5 53:6 we've 12:20 26:13	26:13 35:7,8 45:12 46:3 WHITEHEAD 2:12 William 1:18 3:12 5:3 58:2 window 56:10,15 witness 1:19 3:14 4:11 6:10 31:2 37:16 59:11 woman's 18:23 words 17:15 28:13 29:8 43:8 45:10 45:16 46:2 54:17 work 25:21 26:25 27:2,4,19,25 33:25 51:16 53:3 53:16 worked 7:5 23:10 24:8 29:9 39:9 49:10 working 20:24 23:13 24:10 26:24 36:3 50:24,25 51:2,3 57:19 works 35:9,11 worth 22:4 23:7 25:23 wouldn't 25:24 writing 11:18,24 12:22 55:25 56:21 57:4,12 written 7:18 57:5 X X 2:15 Y yard 23:11,23 yeah 6:9,10 7:19 9:22 23:24 26:11 26:17 28:10 30:18 31:13 36:21 43:4 54:2,8 year 6:11,19 9:24 16:7 18:25 26:10 years 6:17,18,22 12:9 13:11 14:7 16:24 20:24 30:15 Yep 37:21,24 38:3	yesterday 47:8 y'all 28:2,12 29:22 33:19 40:19 50:6 52:17 53:14,15 Z zero 20:17 32:8 43:7 \$ \$175 27:9 0 05-0755-AB 1:11 1 1st 14:3,4,18,19,20 20:15,15,16 36:25 36:25 10223 2:5 110 1:23 2:13 1200 2:9 134 2:4 15-14-37 3:4 17th 6:12 11:11,12 18th 19:16 46:22 19B 40:11 1995 9:25 1998 12:11 39:20 2 2000 9:24 2004 18:14 19:17 19:18 38:15,16 2005 1:24 14:4,4,18 14:19,20 20:16 22:7 30:12 36:25 49:15,16 3 3 2:19,22 30 3:6 30th 1:24 30(b)(6) 38:6 31401 2:5 31402 2:14 32207 2:10 4 4:40 1:25
---	---	---	--	--

5				
5:30 58:3				
59 2:25				
6				
6 3:6				
600 2:9				
7				
786 2:13				
8				
8B 39:11				
9				
9-11-28 3:3				

EXHIBIT G**IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA**

CAPITAL CARGO INCORPORATED,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO
	)	CV 05-0755-AB
RAIL LINK, INC.,	)	
SAVANNAH PORT TERMINAL	)	
RAILROAD, INC.,	)	
and	)	
GEORGIA PORTS AUTHORITY,	)	
	)	
Defendants.	)	

AFFIDAVIT OF STEVE MCCARTHY

Personally appeared before me, the undersigned Notary in and for the State and County below mentioned, Steve McCarthy, who, having first been fully sworn, on oath, deposes and states:

1.

This affidavit is given in opposition to Defendant SPTR's motion for stay and transfer, and is based upon personal knowledge, and where otherwise so indicated, upon the business records of Capital Cargo, Inc. as regularly maintained in the ordinary course of business. I am of the age of majority and know of no legal impediment or disability which would prevent the giving of this affidavit.

2.

I am employed by Capital Cargo, Inc. In my position I am in charge of handling the cargo delivered by SPTR. With the exception of a brief departure in mid-2004, Capital has received three deliveries a day from SPTR until 2005. We receive the first

delivery around 8:00 a.m. This consists of three cars which we immediately begin to unload. As we open the second car, we fax a request for the second delivery. It takes approximately two hours to unload the three cars. We usually receive the second delivery around 11:00 a.m. and the same process leads to a second fax request followed by a third delivery around 3:00 p.m. Oftentimes SPTR does not make the final delivery by 3:00 p.m. and we pay our employees overtime as necessary to complete our work after normal business hours.

3.

We met with Rail Link and Mr. Eason in August, 2004 to discuss the decline in deliveries. He told us SPTR only had to make one delivery. After that meeting SPTR nevertheless went back to two to three deliveries a day. By January, 2005, we were trying to schedule a meeting to resolve past demurrage. The daily deliveries had dropped down again to two or less a day. I routinely called Mr. Jim Balone at Rail Link to discuss loss in service and resulting demurrage. We were trying to schedule another meeting. At this point we are definitely having an ongoing discussion about the service and demurrage and no one has said a written objection to the demurrage charge was needed. In fact the new 2005 tariff creating this obligation was not effective and had not arrived. When the February, 2005 demurrage bill arrived, I called to insist again on a meeting which occurred on March 22, 2005. At that meeting Mr. Eason again maintained only one daily delivery was required but he authorized Mr. Balone and me to meet again to see how much demurrage would be owed if three daily deliveries had been made. Mr. Balone got sick. I went on vacation. The meeting was not scheduled until May 5, 2005. At this point I have the March bill and the April bill.

Mr. Balone met with me in the morning. He told me he had no authority to consider credits against demurrage when less than three daily deliveries were made in a day. He left and returned that same day with others who for the first time categorically stated no credits on less than three deliveries would be offered and no further service would be provided unless and until all demurrage was paid at approximately \$66,000. We refused to pay.

4.

During this first quarter of 2005 I have repeatedly seen SPTR engines headed off GPA property to the CSX terminal. I have seen multiple SPTR engines work at the same time on GPA property, but almost always I see a SPTR engine resting idle at the SPTR office.

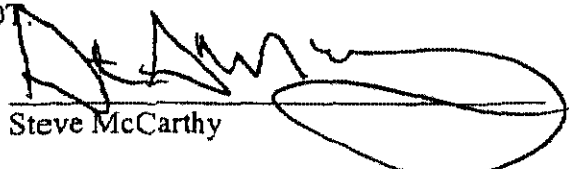
5.

When SPTR terminated rail service I spoke with Norfolk Southern in connection with transferring the stranded rail cars to Capital's new storage facility and can confirm SPTR would not initially release the cars to Norfolk Southern.

6.

With the exception of approximately \$4,000, the entire SPTR demurrage claim is entirely caused by SPTR's failure to make three daily deliveries which in turn is not the fault of anything Capital either did or failed to do.

FURTHER AFFIANT SAYETH NOT


Steve McCarthy

Subscribed and sworn to before

me this 14th day of Sept, 2005

Nancy E. Armstrong
Notary Public

My Commission Expires *Nov. 29, 2008*

NANCY E. ARMSTRONG
Notary Public, Chatham County, GA
My Commission Expires November 29, 2008

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

FILED IN OFFICE
2005 SEP 10 PM 3:25
CS

CAPITAL CARGO INCORPORATED,)

Plaintiff,)

vs.)

CIVIL ACTION NO
CV 05-0755-AB

RAIL LINK, INC.,)
SAVANNAH PORT TERMINAL)
RAILROAD, INC.,)
and)
GEORGIA PORTS AUTHORITY,)

Defendants.)

CERTIFICATE OF SERVICE

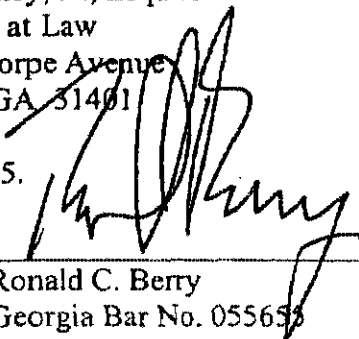
This is to certify that I have this day served the foregoing Plaintiff's Supplemental Brief in Opposition to Defendant SPTR's Motion to Stay and Transfer by depositing a properly addressed copy thereof, postage prepaid, in the United States Mail upon:

P. Campbell Ford, Esquire
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This 11th day of September, 2005.



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Price Lists contain rail prices and shipment conditions for any move on CSXT.

Paper, Pulp, Fiber, Lumber and Panel price lists are maintained on the [Forest Products](#) price list page.

- **Ready to look up a price?**

If you already know your STCC code, car type, routing, and rail station information, use the ShipCSX [Price Look-Up tool](#).

- **Not sure what STCC code your product falls under?**

[Find the STCC](#) [EX](#) for your product.

- **Need information about [accessorial or supplemental pricing](#)?**

- **Not sure about the routing? Check the [interline routing guide](#) notices to ensure the best routing when planning Rule 11 shipments.**

- **[A+B Pricing Information](#) [PDF](#)**

Get through prices online with CSX's A+B pricing system.

- **Don't see the price list you need?**

[Contact us](#) to request information.

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CSX Forest Products' Commodities

Know the general category your product falls into? Use this chart as a quick reference for price or information requests.

General Product Category	Contact
Panels	panel@csx.com
Lumber	lumber@csx.com
Woodchips	woodchips@csx.com
Logs, Poles, RR Ties	logs@csx.com
Packaging Paper	packpaper@csx.com
Newsprint	newsprint@csx.com
Printing Paper	printpaper@csx.com
Recycled Paper	recycpaper@csx.com
Woodpulp	woodpulp@csx.com

Not sure what group your commodity falls into ? Look it up using the table below. Use the custom function in the pull down arrow to find all products that contain or equal the product description you entered. Try to match the description as closely as possible.

Product Description	Revenue STCC 7	General Description	Point of Contact
PULPBOARD OR FIBREBOARD,	2631117	Packaging Paper	packpaper@csx.com
PULPBOARD OR FIBREBOARD,	2631117	Packaging Paper	packpaper@csx.com
LUMBER OR TIMBER, ROUGH	2421184	Lumber	lumber@csx.com
PRINTING PAPER, LESS THAN	2621345	Printing Paper	printpaper@csx.com
PRINTING PAPER, LESS THAN	2621345	Printing Paper	printpaper@csx.com
LUMBER OR TIMBER, ROUGH	2421184	Lumber	lumber@csx.com
WOODPULP, NOT POWDERED,	2611135	Woodpulp	woodpulp@csx.com
WOODPULP, NOT POWDERED,	2611135	Woodpulp	woodpulp@csx.com
PULPWOOD CHIPS, PINE	2411580	Woodchips	woodchips@csx.com
PULPWOOD CHIPS, HARDWOOD	2411560	Woodchips	woodchips@csx.com
SCRAP OR WASTE PAPER, NOT	4024115	Recycled Paper	recycpaper@csx.com
PULPWOOD CHIPS, HARDWOOD	2411560	Woodchips	woodchips@csx.com
PULPWOOD CHIPS, PINE	2411580	Woodchips	woodchips@csx.com
SCRAP OR WASTE PAPER, NOT	4024115	Recycled Paper	recycpaper@csx.com
NEWSPRINT PAPER, FIBRE	2621115	Newsprint	newsprint@csx.com
PLYWOOD, NEC, MADE FROM	2432158	Panels	panel@csx.com
PLYWOOD, NEC, MADE FROM	2432158	Panels	panel@csx.com
NEWSPRINT PAPER, FIBRE	2621115	Newsprint	newsprint@csx.com
ORIENTED STRAND BOARD,	2499110	Panels	panel@csx.com
PULPWOOD CHIPS, NEC	2411515	Woodchips	woodchips@csx.com
ORIENTED STRAND BOARD,	2499110	Panels	panel@csx.com
AUTOGRAPHIC REGISTER,	2649511	Printing Paper	printpaper@csx.com
PARTICLEBOARD, WOOD,	2499610	Panels	panel@csx.com
PULPWOOD CHIPS, NEC	2411515	Woodchips	woodchips@csx.com
AUTOGRAPHIC REGISTER,	2649511	Printing Paper	printpaper@csx.com
PARTICLEBOARD, WOOD,	2499610	Panels	panel@csx.com
GROUND WOOD PAPER,	2621216	Printing Paper	printpaper@csx.com
GROUND WOOD PAPER,	2621216	Printing Paper	printpaper@csx.com
LONG LOGS, EXCEEDING 8	2411165	Logs, Poles, RR Ties	logs@csx.com
LONG LOGS, EXCEEDING 8	2411165	Logs, Poles, RR Ties	logs@csx.com
LUMBER, GREEN, NATIVE	2421170	Lumber	lumber@csx.com
WRAPPING PAPER, NEC	2621490	Packaging Paper	packpaper@csx.com
CORRUGATED CUTTINGS OR	4024117	Recycled Paper	recycpaper@csx.com
WRAPPING PAPER, NEC	2621490	Packaging Paper	packpaper@csx.com
PULPWOOD OR PULPWOOD	2411410	Logs, Poles, RR Ties	logs@csx.com
LUMBER, GREEN, NATIVE	2421170	Lumber	lumber@csx.com

LOGS, NATIVE WOOD,	2411115	Logs, Poles, RR Ties	logs@csx.com
CORRUGATED CUTTINGS OR	4024117	Recycled Paper	recycpaper@csx.com
LOGS, NATIVE WOOD,	2411115	Logs, Poles, RR Ties	logs@csx.com
PULPWOOD OR PULPWOOD	2411410	Logs, Poles, RR Ties	logs@csx.com
STRUCTURAL BEAMS,	2439120	Lumber	lumber@csx.com
PRINTING PAPER, LESS THAN	2621345	Packaging Paper	packpaper@csx.com
GROUND WOOD PAPER,	2621216	Newsprint	newsprint@csx.com
PRINTING PAPER, LESS THAN	2621345	Packaging Paper	packpaper@csx.com
KILN DRIED LUMBER IN	2421190	Lumber	lumber@csx.com
NEWSPRINT PAPER, FIBRE	2621115	Printing Paper	printpaper@csx.com
NEWSPRINT PAPER, FIBRE	2621115	Printing Paper	printpaper@csx.com
STRUCTURAL BEAMS,	2439120	Lumber	lumber@csx.com
PULPWOOD OR PULPWOOD	2411411	Logs, Poles, RR Ties	logs@csx.com
PULPWOOD OR PULPWOOD	2411411	Logs, Poles, RR Ties	logs@csx.com
KILN DRIED LUMBER IN	2421190	Lumber	lumber@csx.com
POLES, TELEGRAPH OR	2491128	Logs, Poles, RR Ties	logs@csx.com
GROUND WOOD PAPER,	2621216	Newsprint	newsprint@csx.com
POLES, TELEGRAPH OR	2491128	Logs, Poles, RR Ties	logs@csx.com
BIRCH, SPRUCE OR PINE	2421131	Lumber	lumber@csx.com
LUMBER, CANADIAN WOOD,	2421160	Lumber	lumber@csx.com
KILN DRIED LUMBER	2421195	Lumber	lumber@csx.com
LUMBER, CANADIAN WOOD,	2421160	Lumber	lumber@csx.com
KILN DRIED LUMBER	2421195	Lumber	lumber@csx.com
VENEER, BIRCH, PINE OR	2432144	Panels	panel@csx.com
PLYWOOD OR BUILT-UP WOOD,	2432162	Panels	panel@csx.com
WOOD PARTICLEBOARD,	2499615	Panels	panel@csx.com
PULPBOARD OR FIBREBOARD,	2631119	Packaging Paper	packpaper@csx.com
RAILROAD TIES, WOODEN,	2491210	Logs, Poles, RR Ties	logs@csx.com
PULPBOARD, CORRUGATED,	2631125	Packaging Paper	packpaper@csx.com
LUMBER, BOARDS, NATIVE OR	2421180	Lumber	lumber@csx.com
VENEER, FOREIGN WOOD,	2432122	Panels	panel@csx.com
RAILROAD TIES, WOODEN,	2491210	Logs, Poles, RR Ties	logs@csx.com
BIRCH, SPRUCE OR PINE	2421131	Lumber	lumber@csx.com
WOOD PARTICLEBOARD,	2499615	Panels	panel@csx.com
CLIPPINGS OR SCRAP,	4024110	Recycled Paper	recycpaper@csx.com
VENEER, FOREIGN WOOD,	2432122	Panels	panel@csx.com
LUMBER, BOARDS, NATIVE OR	2421180	Lumber	lumber@csx.com
PLYWOOD OR BUILT-UP WOOD,	2432162	Panels	panel@csx.com
JOISTS, FABRICATED, WOOD	2439130	Lumber	lumber@csx.com
COTTON LINTERS PULP	2611140	Woodpulp	woodpulp@csx.com
VENEER, BIRCH, PINE OR	2432144	Panels	panel@csx.com
PLASTIC LUMBER	3071906	Lumber	lumber@csx.com
WRAPPING PAPER,	2621460	Packaging Paper	packpaper@csx.com
CLIPPINGS OR SCRAP,	4024110	Recycled Paper	recycpaper@csx.com
LUMBER, NEC, NATIVE WOOD,	2421150	Lumber	lumber@csx.com
PULPBOARD, CORRUGATED,	2631125	Packaging Paper	packpaper@csx.com
NEWSPRINT PAPER, BAGASSE	2621110	Newsprint	newsprint@csx.com
WRAPPING PAPER,	2621460	Packaging Paper	packpaper@csx.com
COTTON LINTERS PULP	2611140	Woodpulp	woodpulp@csx.com
CORRUGATED CONTAINERS,	4024116	Recycled Paper	recycpaper@csx.com
TIES, RAILROAD, WOODEN,	2411210	Logs, Poles, RR Ties	logs@csx.com
RIMBOARD	2499120	Panels	panel@csx.com
GROUND WOOD PAPER,	2621215	Printing Paper	printpaper@csx.com
PULPBOARD OR FIBREBOARD,	2631119	Packaging Paper	packpaper@csx.com
WOODPULP CELLULOSE, NEC	2611110	Woodpulp	woodpulp@csx.com
POLES, WOODEN, NEC, IN	2491127	Logs, Poles, RR Ties	logs@csx.com
TIES, RAILROAD, WOODEN,	2411210	Logs, Poles, RR Ties	logs@csx.com
PLASTIC LUMBER	3071906	Lumber	lumber@csx.com

CORRUGATED CONTAINERS,	4024116	Recycled Paper	recycpaper@csx.com
LOGS, APITONG, ASH,	2411152	Logs, Poles, RR Ties	logs@csx.com
WOODPULP CELLULOSE, NEC	2611110	Woodpulp	woodpulp@csx.com
POLES, TELEGRAPH OR	2411635	Logs, Poles, RR Ties	logs@csx.com
PAPER, ENAMELED, GLAZED	2621937	Printing Paper	printpaper@csx.com
WOOD, BUILT-UP OR COM-	2432172	Panels	panel@csx.com
BOARD, BUILDING, BUILDING	2499330	Panels	panel@csx.com
HARDWOOD WOOD PULP,	2611133	Woodpulp	woodpulp@csx.com
POLES, TELEGRAPH OR	2411635	Logs, Poles, RR Ties	logs@csx.com
POLES, WOODEN, NEC, IN	2491127	Logs, Poles, RR Ties	logs@csx.com
SIDING, EXTERIOR, 3/8	2499906	Panels	panel@csx.com
BOARD, BUILDING, BUILDING	2499330	Panels	panel@csx.com
PULPBOARD, NEC, PAPER OR	2631114	Packaging Paper	packpaper@csx.com
LOGS, FOREIGN WOOD, NEC	2411110	Logs, Poles, RR Ties	logs@csx.com
GROUND WOOD PAPER,	2621215	Printing Paper	printpaper@csx.com
LUMBER, NEC, NATIVE WOOD,	2421150	Lumber	lumber@csx.com
PLYWOOD, NEC, MADE FROM	2432159	Panels	panel@csx.com
WOOD, BUILT-UP OR COM-	2432172	Panels	panel@csx.com
SOFTWOOD WOOD PULP,	2611134	Woodpulp	woodpulp@csx.com
JOISTS, FABRICATED, WOOD	2439130	Lumber	lumber@csx.com
LOGS, APITONG, ASH,	2411152	Logs, Poles, RR Ties	logs@csx.com
RAILROAD CROSSING	2491215	Logs, Poles, RR Ties	logs@csx.com
WOOD PULP DERIVED FROM	2611190	Woodpulp	woodpulp@csx.com
BOARDS, PANELS, OR	2429948	Panels	panel@csx.com
PAPER, ENAMELED, GLAZED	2621937	Printing Paper	printpaper@csx.com
WOOD PULP DERIVED FROM	2611190	Woodpulp	woodpulp@csx.com
LUMBER, CEDAR, NATIVE WOOD	2421175	Lumber	lumber@csx.com
NEWSPRINT PAPER, BAGASSE	2621110	Newsprint	newsprint@csx.com
RAILROAD CROSSING	2491215	Logs, Poles, RR Ties	logs@csx.com
STRAWBOARD CONSISTING OF	2661366	Panels	panel@csx.com
LUMBER, FOREIGN WOOD,	2421127	Lumber	lumber@csx.com
TREATED STRUCTURAL BEAMS,	2439150	Lumber	lumber@csx.com
LUMBER, CEDAR, NATIVE WOOD	2421175	Lumber	lumber@csx.com
WASTE PAPER PULP, WET	2611150	Woodpulp	woodpulp@csx.com
FUEL, LOGS OR PELLETS,	2411701	Woodchips	woodchips@csx.com
PULPBOARD, NEC, PAPER OR	2631114	Packaging Paper	packpaper@csx.com
PLYWOOD, NEC, MADE FROM	2432159	Panels	panel@csx.com
WASTE PAPER, GROUND, NEC	4024120	Recycled Paper	recycpaper@csx.com
WAFFERBOARD, WOOD, CON-	2499115	Panels	panel@csx.com
LOGS, FOREIGN WOOD, NEC	2411110	Logs, Poles, RR Ties	logs@csx.com
STRAWBOARD CONSISTING OF	2661366	Panels	panel@csx.com
NEWSPRINT PAPER, BAGASSE	2621110	Printing Paper	printpaper@csx.com
WOOD CHIPS, NOT CHARRED,	2411545	Woodchips	woodchips@csx.com
WOOD, BUILT-UP OR COM-	2432156	Panels	panel@csx.com
LINING OR WRAPPER PAPER,	2621415	Packaging Paper	packpaper@csx.com
FLITCHES, FOREIGN WOOD,	2421110	Lumber	lumber@csx.com
PAVING BLOCKS, WOOD, NOT	2499902	Lumber	lumber@csx.com
TIMBER, HEWED, ROUND OR	2421186	Lumber	lumber@csx.com
LUMBER, FOREIGN WOOD,	2421127	Lumber	lumber@csx.com
LANDSCAPE TIMBERS MADE	2429970	Lumber	lumber@csx.com
WRITING PAPER, LESS THAN	2621360	Printing Paper	printpaper@csx.com
WALLBOARD OR BUILDING	2432117	Panels	panel@csx.com
FUEL, LOGS OR PELLETS,	2411701	Woodchips	woodchips@csx.com
WOODPULP, NORTHERN	2611136	Woodpulp	woodpulp@csx.com
FLITCHES, FOREIGN WOOD,	2421110	Lumber	lumber@csx.com
POLES, WOODEN, NEC, IN	2411615	Logs, Poles, RR Ties	logs@csx.com
RIMBOARD	2499120	Panels	panel@csx.com
FORMS OR SHAPES, HARD-	2499325	Panels	panel@csx.com

LANDSCAPE TIMBERS MADE	2429970	Lumber	lumber@csx.com
LUMBER, ROUGH OR DRESSED,	2491310	Lumber	lumber@csx.com
TOILET PAPER STOCK,	2621820	Printing Paper	printpaper@csx.com
WAFERBOARD, WOOD, CON-	2499115	Panels	panel@csx.com
SOFTWOOD WOOD PULP,	2611134	Woodpulp	woodpulp@csx.com
PAPER, NEC, NOT PRINTED	2621990	Printing Paper	printpaper@csx.com
PAPER BAGS, NEC, OR	2643190	Printing Paper	printpaper@csx.com
WALLBOARD OR BUILDING	2432117	Panels	panel@csx.com
BOARDS, DRILL PRESS BACK-	2499335	Panels	panel@csx.com
WASTE PAPER, GROUND, NEC	4024120	Recycled Paper	recycpaper@csx.com
NEWSPRINT PAPER,	2621125	Newsprint	newsprint@csx.com
BOARDS, DRILL PRESS BACK-	2499335	Panels	panel@csx.com
WOOD CHIPS, CHARRED	2411540	Woodchips	woodchips@csx.com
LUMBER, NATIVE WOOD,	2421955	Panels	panel@csx.com
BOARDS, PANELS, OR	2429948	Panels	panel@csx.com
BUILT-UP WOOD OR PLYWOOD,	2432113	Panels	panel@csx.com
POLES OR STAKES, PLANT,	2491125	Logs, Poles, RR Ties	logs@csx.com
POLES, WOODEN, NEC, IN	2411615	Logs, Poles, RR Ties	logs@csx.com
LUMBER, ROUGH OR DRESSED,	2491310	Lumber	lumber@csx.com
CORES, LOG	2411970	Logs, Poles, RR Ties	logs@csx.com
NEWSPRINT PAPER, BAGASSE	2621110	Printing Paper	printpaper@csx.com
CONCRETE CONSTRUCTION	2499992	Lumber	lumber@csx.com
FORMS OR SHAPES, HARD-	2499325	Panels	panel@csx.com
BIRCH, SPRUCE OR PINE	2421130	Lumber	lumber@csx.com
FUEL WOOD OR FIREWOOD	2411715	Woodchips	woodchips@csx.com
LUMBER, CANADIAN WOOD,	2421159	Lumber	lumber@csx.com
VENEER, NATIVE WOOD, NEC,	2432142	Panels	panel@csx.com
PULPWOOD CHIPS, MIXED	2411570	Woodchips	woodchips@csx.com
PAPER, NEC, NOT PRINTED	2621990	Printing Paper	printpaper@csx.com
WOODPULP, NORTHERN	2611136	Woodpulp	woodpulp@csx.com
POLES OR STAKES, PLANT,	2491125	Logs, Poles, RR Ties	logs@csx.com
CORES, LOG	2411970	Logs, Poles, RR Ties	logs@csx.com
ORIENTED STRAND	2439140	Lumber	lumber@csx.com
SIDING, EXTERIOR, 3/8	2499906	Panels	panel@csx.com
FUEL WOOD OR FIREWOOD	2411715	Woodchips	woodchips@csx.com
NEWSPRINT PAPER,	2621125	Printing Paper	printpaper@csx.com
FIBRE STOCK PAPER, NEC	2621720	Printing Paper	printpaper@csx.com
ROOF ARCHES OR TRUSSES,	2439126	Lumber	lumber@csx.com
BOXWOOD, DOGWOOD, IRON-	2421126	Lumber	lumber@csx.com
AGRICULTURAL MULCH,	4024125	Recycled Paper	recycpaper@csx.com
LUMBER, LONG LENGTHS, NA-	2421181	Lumber	lumber@csx.com
FLYLEAF SHAVINGS	4024152	Recycled Paper	recycpaper@csx.com
ORIENTED STRAND	2439140	Lumber	lumber@csx.com
PULPWOOD CHIPS,	2411550	Woodchips	woodchips@csx.com
POSTS, NEC, WOODEN,	2491130	Logs, Poles, RR Ties	logs@csx.com
VENEER, BOXWOOD, BUTTER-	2432120	Panels	panel@csx.com
LUMBER, CANADIAN WOOD,	2421159	Lumber	lumber@csx.com
AGRICULTURAL MULCH,	4024125	Recycled Paper	recycpaper@csx.com
ROOFING OR SHEATING,	2499932	Lumber	lumber@csx.com
NEWSPRINT PAPER,	2621125	Newsprint	newsprint@csx.com
WOODPULP, CHEMO-THERMO-	2611137	Woodpulp	woodpulp@csx.com
LINING OR WRAPPER PAPER,	2621415	Packaging Paper	packpaper@csx.com
PAPER OR PAPERBOARD,	2621912	Printing Paper	printpaper@csx.com
PAPER GOODS, NEC	2649990	Printing Paper	printpaper@csx.com
OLD NEWSPAPERS	4024150	Recycled Paper	recycpaper@csx.com
VENEER, NATIVE WOOD,	2432135	Panels	panel@csx.com
WOOD CHIPS, CHARRED	2411540	Woodchips	woodchips@csx.com
BARK, SOFTWOOD, GROUND OR	2411923	Logs, Poles, RR Ties	logs@csx.com

FLOORING PLANK, NOT	2421518	Logs, Poles, RR Ties	logs@csx.com
PAPER GOODS, NEC	2649990	Printing Paper	printpaper@csx.com
BUILT-UP WOOD OR PLYWOOD,	2432113	Panels	panel@csx.com
BIRCH, SPRUCE OR PINE	2421136	Lumber	lumber@csx.com
WRITING PAPER, LESS THAN	2621360	Printing Paper	printpaper@csx.com
SCREENINGS, WOODPULP	2611160	Woodpulp	woodpulp@csx.com
VENEER, BIRCH, PINE OR	2432143	Panels	panel@csx.com
PLYWOOD, FACED WITH	2432152	Panels	panel@csx.com
BIRCH, SPRUCE OR PINE	2421130	Lumber	lumber@csx.com
BLOTTING PAPER	2621310	Printing Paper	printpaper@csx.com
CALENDER ROLL PAPER	2621711	Printing Paper	printpaper@csx.com
FLYLEAF SHAVINGS	4024152	Recycled Paper	recycpaper@csx.com
VENEER, NATIVE WOOD, NEC,	2432142	Panels	panel@csx.com
PLYWOOD, FACED WITH	2432152	Panels	panel@csx.com
LANDSCAPE TIMBERS MADE	2491910	Lumber	lumber@csx.com
PILING, WOODEN, CREOSOTED	2491185	Logs, Poles, RR Ties	logs@csx.com
CALENDER ROLL PAPER	2621711	Printing Paper	printpaper@csx.com
PAPER OR PAPERBOARD,	2621912	Printing Paper	printpaper@csx.com
PAPER, PULPBOARD OR	2621943	Printing Paper	printpaper@csx.com
PAPER BAGS, NEC, OR	2643190	Printing Paper	printpaper@csx.com
OLD NEWSPAPERS	4024150	Recycled Paper	recycpaper@csx.com
BUILT-UP OR COMBINED	2432110	Panels	panel@csx.com
PLYWOOD, FACED WITH STONE	2432153	Panels	panel@csx.com
FLITCHES, CANADIAN,	2421115	Lumber	lumber@csx.com
PAPER ROLL PLUGS, MOLDED,	2499990	Lumber	lumber@csx.com
LOGS, BOXWOOD, COCOBOLO,	2411125	Logs, Poles, RR Ties	logs@csx.com
POSTS, NEC, WOODEN,	2491130	Logs, Poles, RR Ties	logs@csx.com
GYPSUM BOARD PAPER	2621745	Packaging Paper	packpaper@csx.com
PAPER AND CELLULOSE FILM,	2621933	Printing Paper	printpaper@csx.com
PAPER, COATED WITH BIRD	2621935	Printing Paper	printpaper@csx.com
PAPER, BRAIDED, TWISTED,	2649926	Printing Paper	printpaper@csx.com
WOOD, SPENT	4023120	Recycled Paper	recycpaper@csx.com
LUMBER, FOREIGN WOOD,	2421128	Lumber	lumber@csx.com
BIRCH, SPRUCE OR PINE	2421136	Lumber	lumber@csx.com
CONCRETE CONSTRUCTION	2499992	Lumber	lumber@csx.com
WOOD CHIPS, NOT CHARRED,	2411545	Woodchips	woodchips@csx.com
SHORT LOGS (NOT PULP-	2411310	Logs, Poles, RR Ties	logs@csx.com
GYPSUM BOARD PAPER	2621745	Packaging Paper	packpaper@csx.com
DUNNAGE, FREIGHT LOADING,	2643142	Printing Paper	printpaper@csx.com
VENEER, NATIVE WOOD,	2432136	Panels	panel@csx.com
LUMBER, MAHOGANY	2421145	Lumber	lumber@csx.com
LANDSCAPE TIMBERS MADE	2491910	Lumber	lumber@csx.com
PULPWOOD CHIPS,	2411550	Woodchips	woodchips@csx.com
PULPWOOD CHIPS, SPRUCE OR	2411590	Woodchips	woodchips@csx.com
PILING, WOODEN, NOT	2411610	Logs, Poles, RR Ties	logs@csx.com
DUNNAGE, FREIGHT LOADING,	2643142	Printing Paper	printpaper@csx.com
PAPER, AUTOGRAPHIC OR	2649512	Printing Paper	printpaper@csx.com
PAPER DUST	4024170	Recycled Paper	recycpaper@csx.com
BUILT-UP OR COMBINED	2432110	Panels	panel@csx.com
WOOD, BUILT-UP OR COM-	2432156	Panels	panel@csx.com
SHINGLES, WOODEN,	2491920	Panels	panel@csx.com
TIMBER, HEWED, ROUND OR	2421186	Lumber	lumber@csx.com
MISSING FROM LEGACY SOURCE	2631115	Packaging Paper	packpaper@csx.com
PRINTING PAPER, LESS THAN	2621345	Newsprint	newsprint@csx.com
WRITING PAPER, FOLDED,	2649110	Printing Paper	printpaper@csx.com
PAPER, BRAIDED, TWISTED,	2649926	Printing Paper	printpaper@csx.com
STRAW PULP	2611125	Woodpulp	woodpulp@csx.com
WASTE PAPER PULP, WET	2611150	Woodpulp	woodpulp@csx.com

SCREENINGS, WOODPULP	2611160	Woodpulp	woodpulp@csx.com
BACK BOARDS FOR METAL	2432115	Panels	panel@csx.com
VENEER, BOXWOOD, BUTTER-	2432121	Panels	panel@csx.com
VENEER, FOREIGN WOOD,	2432123	Panels	panel@csx.com
VENEER, NATIVE WOOD, NEC,	2432141	Panels	panel@csx.com
WOOD, BUILT-UP OR COM-	2432170	Panels	panel@csx.com
SHINGLES, WOODEN,	2491920	Panels	panel@csx.com
CLAPBOARDS, NATIVE WOOD,	2421140	Lumber	lumber@csx.com
WOOD BARS OR RODS,	2499908	Lumber	lumber@csx.com
RULES, LOG OR LUMBER,	2499909	Lumber	lumber@csx.com
WOOD, FACED WITH SHEET	2499929	Lumber	lumber@csx.com
PLANT POLES, WOODEN, IN	2411620	Logs, Poles, RR Ties	logs@csx.com
POSTS, NEC, WOODEN, NOT	2411627	Logs, Poles, RR Ties	logs@csx.com
PULPWOOD, SPLIT OR ROUND	2429966	Logs, Poles, RR Ties	logs@csx.com
MINE PROPS, TIMBERS,	2491182	Logs, Poles, RR Ties	logs@csx.com
PILING, WOODEN, CREOSOTED	2491185	Logs, Poles, RR Ties	logs@csx.com
WRAPPING PAPER, LINED	2621465	Packaging Paper	packpaper@csx.com
GROUND WOOD PAPER,	2621215	Newsprint	newsprint@csx.com
NEWSPRINT PAPER,	2621125	Printing Paper	printpaper@csx.com
PAPER, PULPBOARD OR	2621943	Printing Paper	printpaper@csx.com
BAGS OR POUCHES, CELLU-	2643138	Printing Paper	printpaper@csx.com
FILE FOLDERS, PAPER OR	2645135	Printing Paper	printpaper@csx.com
BOXES, FIBREBOARD, PAPER	2651150	Printing Paper	printpaper@csx.com
PAPER STOCK	4024181	Recycled Paper	recycpaper@csx.com
BOARDS, PANELS, OR	2421953	Panels	panel@csx.com
LUMBER, NATIVE WOOD,	2421955	Panels	panel@csx.com
VENEER, NATIVE WOOD,	2432136	Panels	panel@csx.com
VENEER, NATIVE WOOD, NEC,	2432141	Panels	panel@csx.com
PLYWOOD, FACED WITH STONE	2432153	Panels	panel@csx.com
LUMBER, MAHOGANY	2421145	Lumber	lumber@csx.com
LUMBER, LONG LENGTHS, NA-	2421181	Lumber	lumber@csx.com
PULPWOOD CHIPS, CEDAR	2411555	Woodchips	woodchips@csx.com
LOGS, BOXWOOD, COCOBOLO,	2411125	Logs, Poles, RR Ties	logs@csx.com
PILING, WOODEN, NOT	2411610	Logs, Poles, RR Ties	logs@csx.com
PULPWOOD, SPLIT OR ROUND	2429967	Logs, Poles, RR Ties	logs@csx.com
GROUND WOOD PAPER,	2621216	Packaging Paper	packpaper@csx.com
WRAPPING PAPER, CLOTH	2621455	Packaging Paper	packpaper@csx.com
WRAPPING PAPER, LINED	2621465	Packaging Paper	packpaper@csx.com
GROUND WOOD PAPER,	2621215	Newsprint	newsprint@csx.com
LOGS OR ROLLS, FIBRE-	2649981	Printing Paper	printpaper@csx.com
BOXES, FIBREBOARD, PAPER	2651158	Printing Paper	printpaper@csx.com
MAGAZINES, OLD	4024154	Recycled Paper	recycpaper@csx.com
PAPER DUST	4024170	Recycled Paper	recycpaper@csx.com
PAPER STOCK	4024181	Recycled Paper	recycpaper@csx.com
HARDWOOD WOOD PULP,	2611133	Woodpulp	woodpulp@csx.com