

**FORD, MILLER & WAINER, P.A.**

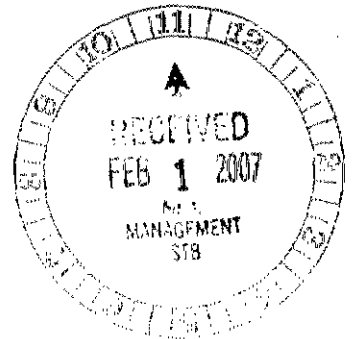
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January 30, 2007



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

ENTERED  
Office of Proceedings

FEB 01 2007

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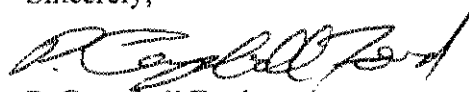
RE: Savannah Port Terminal Railroad, Inc. – Petition for Declaratory Order-  
Certain Rates & Practices as Applied to Capital Cargo, Inc.  
STB Docket No. FD34920

218559

Dear Secretary:

Please find enclosed an original and ten (10) copies of Savannah Port Terminal Railroad's ("SPTR") Response to Capital Cargo's Motion to Dismiss SPTR's Petition for Declaratory Order. Should you have any questions, please do not hesitate to contact me. A copy has been provided to opposing counsel.

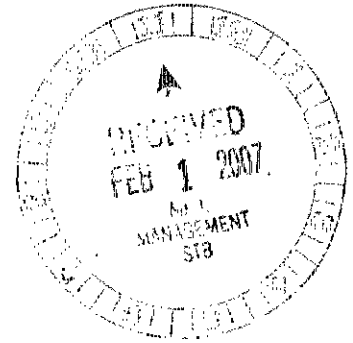
Sincerely,

  
P. Campbell Ford

Enclosure/

Original Response  
10 Copies of Response

C: Ron Berry, Esquire (1 copy only)  
James T. Kilbreth, Esquire (1 copy only)  
Thomas Mahoney III, Esquire (1 copy only)



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Docket No. FD34920**

**SAVANNAH PORT TERMINAL RAILROAD, INC.- PETITION FOR  
DECLARATORY ORDER- CERTAIN RATES AND PRACTICES AS APPLIED  
TO CAPITAL CARGO, INC.**

**SAVANNAH PORT TERMINAL RAILROAD, INC.'S RESPONSE TO CAPITAL  
CARGO, INC.'S MOTION TO DISMISS**

**SUBMITTED ON BEHALF OF SAVANNAH PORT TERMINAL  
RAILROAD, INC. BY**

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Florida Bar No. 0480495  
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904-390-1970 (telephone) 904-390-1975 (facsimile)

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Docket No. FD34920**

**SAVANNAH PORT TERMINAL RAILROAD, INC.- PETITION FOR  
DECLARATORY ORDER- CERTAIN RATES AND PRACTICES AS APPLIED  
TO CAPITAL CARGO, INC.**

**SAVANNAH PORT TERMINAL RAILROAD, INC.'S RESPONSE TO CAPITAL  
CARGO, INC.'S MOTION TO DISMISS**

Petitioner Savannah Port Terminal Railroad, Inc. ("SPTR") hereby files its Response to Capital Cargo Inc.'s ("Capital Cargo") Motion to Dismiss SPTR's Petition for Declaratory Order, and states:

Capital Cargo has filed a Motion to Dismiss ("MTD") SPTR's Petition for Declaratory Order for lack of jurisdiction under two concepts, neither of which have merit. First, Capital Cargo asserts that the transportation and service, including demurrage, at issue are the subject of a contract between Capital Cargo and SPTR, and that as such, this case is outside the jurisdiction of the Surface Transportation Board ("STB"). Second, Capital Cargo claims that the overwhelming majority of the shipments at issue are "exempted commodities" pursuant to 49 C.F.R. § 1039.11 and therefore, not subject to Subtitle IV of Title 49 and outside of the STB's jurisdiction.

## **THERE IS NO CONTRACT BETWEEN CAPITAL CARGO AND SPTR**

The rather obvious problem with Capital Cargo's first argument is that there was no contract between SPTR and Capital Cargo.<sup>1</sup> The only contract that Capital Cargo had with anyone was a lease (Exh. I)<sup>2</sup> with Georgia Ports Authority ("GPA"), and GPA is not a party to this action. This explains why Capital Cargo does not cite any contractual provisions and merely improperly concludes that there is a contract with SPTR. Had there been a contract between SPTR and Capital Cargo, then Capital Cargo might have had an argument that contractual interpretations are a matter for the Courts and not the STB.<sup>3</sup> It is through this phantom contract with SPTR that Capital Cargo asserts that SPTR's claim for outstanding demurrage is contractual and outside of the STB's jurisdiction. As described below, however, without a contract between Capital Cargo and SPTR, the subject demurrage charges were incurred pursuant to the previously described tariffs (Exh. M1 & M3) that already existed or were properly created by SPTR pursuant to 49 U.S.C. § 10746.

As discussed above, the only contract to which Capital Cargo is a party is its lease with GPA. Not surprisingly, the lease lacks the service, rate and condition specifications that are required for a contract to be recognized under 49 U.S.C. § 10709 as outside the jurisdiction of the STB. Under 49 U.S.C. § 10709(a),

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<sup>1</sup> SPTR and Capital Cargo did enter into an agreement on May 19, 2005, regarding the service to be provided to Capital Cargo going forward. This agreement post-dates all of the outstanding demurrage issues raised by SPTR in its Petition for Declaratory Order and is irrelevant to this matter.

<sup>2</sup> Unless otherwise specified, all referenced exhibits are exhibits to SPTR's Petition for Declaratory Order.

<sup>3</sup> It should be noted that Capital Cargo unsuccessfully argued this before Georgia State Court in response to SPTR's Motion to Refer Questions to the STB. Of further significance is that even after the Court appropriately entered an order referring SPTR's issues to the STB, Capital Cargo never again challenged the STB's jurisdiction until 11 months later. Capital Cargo did not appeal the Order of Court, cannot do so now and is bound by this earlier determination.

“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.”

*Id. Emphasis Added.* Here, SPTR does not deny that a rail carrier and its customer(s) have the option of entering into a contract that describes the number of deliveries to be made, the specific times that the deliveries will be made, the rates for each service, the demurrage that will apply, and all other specific conditions that are essential to having a contract for “specified services” with “specified rates”. SPTR does deny that this was done in the instant case. SPTR never contracted with Capital Cargo and the subject demurrage charges arose under published tariffs. Furthermore, Capital Cargo cannot even point to any contractual language stating otherwise in the only contract that it did have, its lease with GPA.

Even if SPTR had been a party to the lease, the lease, in and of itself, does not meet the contractual requirements under 49 U.S.C. § 10709 in that it does not discuss specific services, rates, and conditions. The cases cited by Capital Cargo in its Motion to Dismiss only further emphasize how deficient the lease is when held to the standard for contract service required under 49 U.S.C. § 10709. For example, see Western Resources, Inc. v. Union Pacific Railroad Company, 2002 SL 1462067, 1 (D.Kan., June 26, 2002)(The parties agreed that the terms, conditions and rates set forth in the agreement would apply retroactively to January 27, 1993). *Emphasis Added.* See also Cross Oil Refining & Marketing, Inc. v. Union Pacific Railroad Company, Finance Docket 33582, (S.T.B. served October 27, 1998)(Each contract states: “This CONTRACT is made pursuant to 49 U.S.C. 10709....” Each contract names Cross Oil as the shipper, identifies

the origins and destinations, specifies the terms of the contract, and specifies the rates for the commodities.) In contrast to these cases, the lease in the instant matter merely provides that the “Lessor [GPA] agrees to provide rail service to the Premises as long as the present rail access is maintained by the Lessee.” (Art. 3, Lease). The lease provides no specifics on service, rates or conditions as mandated by United States Code that are necessary to strip the STB of its jurisdiction.

Capital Cargo attempts to circumvent this glaring deficiency by turning to the Easement Agreement: a contract between GPA and SPTR. Capital Cargo was again, not a party to this contract. Notably, it is legally impossible for SPTR and GPA to alter the terms of the lease, which is an agreement between GPA and Capital Cargo, not SPTR. Capital Cargo attempts to inappropriately direct this Board’s attention to this separate contract to which Capital Cargo is not even a party and then relies upon the language as if Capital Cargo was a party. Had SPTR and the GPA included terms in this separate contract that were to the disadvantage of Capital Cargo, one can be assured that Capital Cargo would be arguing to this Board that SPTR and the GPA cannot alter the terms of the Capital Cargo lease ... and Capital Cargo would be correct. In short, the STB must only look to the lease language to determine if the service, rates and conditions are specified (and they are not).

*Assuming arguendo* that Capital Cargo, without being a party, could look to this separate contract to usurp the jurisdiction of this Board. SPTR next addresses the actual language of this contract. The Easement Agreement between SPTR and GPA, discussed the obligation of SPTR “to provide rail transportation services thereon, in accordance with the terms hereof....” (Exh. L at p. 6). Even if Capital Cargo had been a party to the

Easement Agreement, the Easement Agreement still lacks the specific service, rates and conditions required to be recognized as a service contract under 49 U.S.C. § 10709. The Easement is silent as to the number of deliveries to be made to Capital Cargo as well as the circumstances and Capital Cargo even admits that it does not address demurrage. (MTD at p. 18).<sup>4</sup>

The fact that SPTR never contracted with Capital Cargo, alone, is sufficient to demonstrate that SPTR's claim for outstanding demurrage is not contractual and as such, just as the Georgia State Court found, SPTR's claim falls within the primary jurisdiction of the STB. This is especially true considering that none of the agreements referred to by Capital Cargo contain the specific service language required by 49 U.S.C. § 10709. Despite this, however, SPTR will still address the other issues raised in Capital Cargo's Motion for further clarity.

**The Outstanding Demurrage Charges were a Result of the Applicable Tariffs, not Contract, and thus, are within the exclusive primary jurisdiction of the STB**

Capital Cargo's attempt to convince the STB that the outstanding demurrage charges are contractual in nature is, at best, disingenuous. Capital Cargo admits that the only contract that it is a party to, the lease, did not incorporate the tariffs. (MTD at p. 19). Nevertheless, Capital Cargo insists that it did not know about the tariffs until litigation in this matter began, yet simultaneously admits that its understanding was that Capital Cargo was to receive a 48-hour time frame for unloading cars, credits issued for

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<sup>4</sup> The settlement agreement between SPTR and Capital Cargo provides the specificity necessary in order to have a contractual obligation to provide three (3) deliveries per day. The terms of the settlement agreement include, for example, timing of the deliveries, the notification necessary for the deliveries as well as the timing necessary for Capital Cargo to unload each railcar delivery. Throughout these terms, as the settlement agreement exemplifies, SPTR and Capital Cargo could never have a meeting of the minds sufficient to obligate SPTR, even without a contract, to provide three (3) deliveries per day. This is further proof of the insufficiency of Capital Cargo's arguments to remove this demurrage claim from the jurisdiction of the STB.

early unloading, and how demurrage was charged. (MTD at pp. 5 & 8). In that the lease was silent as to these service specifications, as Capital Cargo freely admits, Capital Cargo could only have been aware of this information as it was explained in the applicable tariffs.

Similarly, as Capital Cargo continues to emphasize that it knew nothing about the applicable tariffs, it then admits that it paid demurrage eight (8) to ten (10) times prior to 2005. (MTD at p. 8). These inconsistencies recur throughout Capital Cargo's Motion to Dismiss and only demonstrate Capital Cargo's desperate attempt to alter the facts of this case. However, Capital Cargo is unable to alter the fact that it has acknowledged that it paid some of its demurrage bills pursuant to the applicable tariffs, that it currently owes demurrage to SPTR and significantly, that it did not provide a written objection to any demurrage charges prior to the April 2005 demurrage and therefore, indisputably lost the opportunity to object to there demurrage charges.

Because the outstanding demurrage charges were billed and accrued as a result of the tariffs, and not the contract, SPTR's claim falls within the jurisdiction of the STB.

**The "Waiver" Provision Relied Upon by Capital Cargo Only Applies to the Lease, not the Outstanding Demurrage Accrued**

Capital Cargo argues that because of the "waiver" provision included in the lease, its failure to timely object to the subject demurrage issues cannot be deemed a waiver, despite applicable demurrage tariffs and case law to the contrary. By carefully selecting only a portion of the waiver provision favorable to it, Capital Cargo has once again attempted to mislead the STB, as the alleged waiver only applies to the terms and provisions addressed in the lease and not the outstanding demurrage accrued under the tariffs.

Article 18 of the Lease reads,

ARTICLE 18: Waivers. 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. No waiver by Lessor or Lessee at any time, express or implied, of any breach of any provision of this Lease or a consent to any acceptance by Lessor of any partial payment shall constitute an accord or satisfaction, but shall only be deemed a part payment on account.

*Id. Emphasis Added.* Not only is SPTR not a party to this lease agreement, but the waiver is specific to breaches of the lease provisions and does not extend to tariffs or future agreements, and especially not terms that are absent in the lease such as demurrage and service specifications. Again, Capital Cargo admits that the applicable tariffs were not incorporated into the lease. (MTD at p. 19). Therefore, the Waiver provision found in the lease certainly cannot apply to any terms of either applicable tariff, including the written objection requirement since they are not in the lease. The STB must continue to be mindful of the fact that all the case law cited by Capital Cargo involved contracts specifically incorporating the tariffs and/or the service, rates and conditions. Such a contract does not exist here.

Had either tariff included a similar waiver provision, then Capital Cargo may have had an argument that it did not waive its right to object to any of the outstanding demurrage now. However, that is not the case here. The tariffs specifically provided a deadline to file any objection and Capital Cargo failed to follow the prescribed procedure. It also bears noting that such a waiver provision applying to the tariffs would require an absurd result considering it would warrant the provision requiring a timely written objection to be meaningless. This is an illogical interpretation of the tariffs as well as the lease and the only logical result is to determine that the lease, which does not incorporate

the tariffs or their terms, does not operate to alter the tariffs or the deadline procedure describe therein.

### **Capital Cargo Cannot Escape the Written Objection Requirement Under the Tariffs**

This Board should also consider that until the April 2005 demurrage charges, Capital Cargo never provided a written objection, not just within the required timeframe, but ever! Instead, Capital Cargo continued using SPTR's services without paying and without properly objecting for years. Although Capital Cargo would have the STB believe that the tariff issued to Capital Cargo in February 2005 imposed a new "restriction" and "limitation" to object to demurrage, this just is not true. The same tariff that SPTR adopted in 1998 and that Capital Cargo admittedly previously paid demurrage under also required customers to submit a written objection for any demurrage disputed. Despite this requirement, Capital Cargo chose to remain silent about the accrued demurrage until April 2005.

Capital Cargo's effort to suggest that the case cited by SPTR, Colorado & Southern Railway Company v. Southwestern Roofing & Sheet Metal Co., 374 F.Supp. 24 (D.C. Okl. 1974), is not applicable to the instant matter is likewise without merit. Capital Cargo bases its entire reasoning on its analysis that the case does not apply to a service contract. While that may be the case<sup>5</sup>, SPTR has not contracted with Capital Cargo, and there are no contracts referred to by Capital Cargo that meet the requirements of 49 U.S.C. § 10709 that would even possibly render Colorado & Southern Railway Company inapplicable. While Capital Cargo criticizes SPTR for relying on a thirty-two (32) year

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<sup>5</sup> SPTR is not admitting that the reasoning in Colorado & Southern Railway Company v. Southwestern Roofing & Sheet Metal Co., 374 F.Supp. 24 (D.C. Okl. 1974) does not apply to a service contract as the case does not reach this sort of discussion. Rather, SPTR does not even need to address Capital Cargo's allegation as there is no contract between SPTR and Capital Cargo.

old case, it should be noted that Capital Cargo has not cited any case from any decade that supports its position.

### **Settlement Negotiations are Irrelevant**

Capital Cargo's suggestion that participating in settlement negotiations somehow causes a party to waive any rights it has against the other party is absolutely ludicrous. First of all, as explained in SPTR's Petition, SPTR met with Capital Cargo in March 2005 to clarify and resolve the outstanding demurrage in an attempt to avoid litigation. Even if the discussions were considered settlement negotiations, any topics discussed cannot be disclosed under 49 U.S.C. § 1114.1, as settlement negotiations are excluded by any evidence code. Capital Cargo now asserts, however, that by meeting with Capital Cargo after the fact, SPTR has now waived its right to assert that Capital Cargo was required to submit a written objection to the demurrage accrued and thus be liable for the outstanding demurrage. Even if these discussions were considered settlement negotiations and not privileged, a party cannot waive its right to assert a claim just because it participated in negotiations. Such a position would mean that any party who mediates or negotiates loses his or her right to pursue certain claims or defenses in his or her lawsuit. Not surprisingly, Capital Cargo has not and cannot cite any case law that supports such an absurd argument.

### **Capital Cargo Cannot Now Complain, For the First Time, of Any Errors Allegedly Committed by the Georgia Superior Court in Rightfully Referring SPTR's Demurrage Claim to the STB**

Capital Cargo has claimed that SPTR's Petition must be dismissed because the Georgia Superior Court did not cite or discuss 49 U.S.C. § 10709 in its Order of referral to the STB. Although Capital Cargo unsuccessfully argued its contractual theory

previously to the Georgia Court, Capital Cargo never mentioned 49 U.S.C. § 10709 to the Court at the time the Court was considering SPTR's Motion to Refer Questions to the STB, and certainly never raised this issue until eleven (11) months after the Order was entered. Had Capital Cargo believed the Court erred, then the proper course of action would have been to appeal the decision by filing a Notice of Intent to Appeal within thirty (30) days. However, Capital Cargo, once again, waited silently and now, eleven (11) months later improperly and belatedly urges the STB to dismiss SPTR's Petition for this reason.

**The "Exempt Commodity" Exception in 49 C.F.R. § 1039.11 Does Not Apply to Demurrage, but Merely Rail Transportation**

Capital Cargo has agreed that SPTR's Petition should be dismissed pursuant to the "exempt commodity" exception found in 49 C.F.R. § 1039.11. 49 C.F.R. § 1039.11(a), which states,

(a) *Commodities exempted.* Except as indicated in paragraph (b) of this section, the rail transportation of the commodities listed below is exempt from the provision of 49 U.S.C. subtitle IV.

*Id. Emphasis Added.* This provision applies to the mere transport of exempt commodities from Point A to Point B. It does not apply to the demurrage that SPTR created under 49 U.S.C. § 10746. So even if the majority of the shipments at issue were "exempted commodities," only the transport of these commodities might fall outside of the jurisdiction of the STB, not the accrued demurrage.

**Capital Cargo has now leased a thirteen (13) car track to meet its business needs**

Capital Cargo tries to avert the STB's attention from the real reason demurrage accrued by pointing out that Capital Cargo continued to lease a short, three car track,

(despite its growing business needs), the entire time. This excuse is pathetic at best considering Capital Cargo has now found it necessary to utilize a thirteen (13) car track at its new warehouse to meet its business needs. This is the real motivation behind Capital Cargo's attempts to direct the focus away from the real issues presented by this claim including Capital Cargo's wholesale failure to even properly object to the tariff charges.

**Capital Cargo admits that it owes demurrage, but refuses to pay the demurrage**

Capital Cargo freely admits that, according to its calculations, it owes at least \$4,000.00 in outstanding demurrage to SPTR during 2005, yet Capital Cargo continues to refuse to pay the mere \$4,000.00. Capital Cargo admits that it previously addressed a service issue to the GPA in the summer of 2004, which was then resolved shortly. Yet, Capital Cargo accrued \$5,910.00 in outstanding demurrage in 2003 and \$5,308.00 in outstanding demurrage in the non-summer months of 2004<sup>6</sup>, yet Capital Cargo continues to refuse to pay SPTR these owed demurrage charges. This entire line of argument is without merit.

**Capital Cargo never provided a thirty (30) day notice of default for receiving less than three (3) deliveries per day**

Under Capital Cargo's lease with GPA, there is a mandated thirty (30) day notice provision. (Exh. I, Art. 19). This thirty (30) day notice provision requires the non-breaching party to provide a thirty (30) day notice to the breaching party for an opportunity to cure the breach. The only thirty (30) day notice provision ever provided by Capital Cargo to the GPA is the letter from Kenneth Meyer of Capital Cargo to Douglas Marchand of the GPA dated May 6, 2005, **attached hereto as Exhibit A**,

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<sup>6</sup> For purposes of this conservative calculation, SPTR did not include the demurrage accrued from June – August 2004.

claiming that no rail service was being provided at all. Consistent with the arguments presented above, this notice went to the GPA not SPTR.

It is certainly worth noting that Capital Cargo did not allege, and has never alleged, that there was any breach of the lease as a result of the failure to provide three (3) deliveries per day. In fact, the only contractual provision cited in this notice do not contain any requirement of three (3) deliveries per day. The written contract itself does not provide for three (3) deliveries per day and this mythical contractual requirement created by Capital Cargo subsequent to filing its lawsuit against SPTR, cannot be now asserted before this Board or the Court due to the lack of notice and opportunity to cure.<sup>7</sup> In a final note on this subject, Capital Cargo has obviously chosen to ignore this thirty (30) day notice provision for a very obvious reason. Capital Cargo, as discussed previously, has already entered into a settlement agreement with SPTR providing the specifics of three (3) deliveries per day so that there is now such a contractual requirement. This is the settlement agreement that has previously been identified as Exhibit B to SPTR's Petition for Declaratory Order. If Capital Cargo now provided a thirty (30) day notice with an opportunity to cure, then such a notice would be completely without merit or logic as the three (3) day delivery requirement is in fact now a contractual requirement, was being met by actually providing the three (3) deliveries per day and Capital Cargo left the facility anyway to achieve its underlying goal, which is to inhabit its new thirteen (13) car track facility to increase its business. In other words, Capital Cargo has created these arguments, both factual and legal, in order to avoid

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<sup>7</sup> This lack of a thirty (30) day notice for the alleged breach of the lease in not providing three (3) deliveries per day also highlights SPTR's argument to this Board that there are any three (3) day delivery requirements applicable to the subject tariffs since the lease does not contain this language, there is no notice to this effect and the tariffs in question do not include any such language.

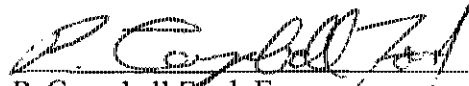
paying its full outstanding demurrage obligations while at the same time abandoning the subject old warehouse to inhabit its new facility.

### **CONCLUSION**

The outstanding demurrage accrued by Capital Cargo is not contractual, but merely a result of the two applicable tariffs. The only contract to which Capital Cargo was a party was its Lease with GPA. SPTR was not a party to this contract. Furthermore, Capital Cargo admits that the tariffs were not incorporated into the Lease. Similarly, Capital Cargo was not a party to the Easement Agreement between SPTR and GPA. Regardless, neither of the contracts referred to by Capital Cargo meet the service specification requirements under 49 U.S.C. § 10709 in order for this matter to be outside of the STB's jurisdiction. In addition, Capital Cargo's reliance on 49 C.F.R. § 1039.11 is misplaced as this provision applies to the mere transport of "exempted commodities" from Point A to Point B, and not to demurrage accrued. For all of the reasons stated above, the STB has jurisdiction of SPTR's claim for outstanding demurrage and accordingly, the STB should deny Capital Cargo's Motion to Dismiss.

### **VERIFICATION**

I, P. Campbell Ford, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this pleading. Executed on January 30, 2007.

  
P. Campbell Ford, Esq.

**CERTIFICATE OF SERVICE**

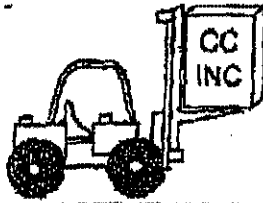
I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Secretary Surface Transportation Board, 1925 "K" Street NW, Suite 700, Washington, DC 24023 via overnight mail and to Daniel L. Rosenthal, Verrill Dana LLP, P.O. Box 586, One Portland Square, Portland, ME 04112-0586 via U.S. Regular Mail on this 30th day of January, 2007.

Dated: January 30, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Campbell Ford", is written over a horizontal line.

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904-390-1970 telephone  
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Attorneys for Defendants Rail Link,  
Inc., and Savannah Port Terminal  
Railroad, Inc.



## Capital Cargo Incorporated

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May 6, 2005

Georgia Ports Authority  
Post Office Box 2406  
Savannah, GA 31402

ATTENTION: DOUGLAS MARCHAND

Re: Capital Cargo Incorporated  
Lease Agreement

Dear Mr. Marshand:

Pursuant to the October 1, 1993 original lease between the Georgia Ports Authority ("GPA") and Commercial Services Pacific of South Carolina, Inc. as amended and assigned to Capital Cargo, Incorporated ("Capital") dated December 10, 1995 (hereinafter "the lease"), notice of default pursuant to Paragraphs 19 and 20 is hereby given. The default consists of GPA's failure to provide "rail service" pursuant to Articles 3 and 14(B) of the lease. More specifically, Rail Link, Inc. has ceased all further rail service to the leased premises unless and until certain demurrage invoices are paid. (Enclosed is May 5, 2005 letter from Rail Link, Inc. confirming cessation of fixture service.) Capital denies any demurrage owed and demands the immediate restoration of rail service. The failure to provide rail service constitutes a material breach of the lease agreement obviating any future rent obligations.

We look forward to the prompt return of rail service.

Very truly yours,



Kenneth Meyer

Cc: Miriam Thompson

280 BRAMPTON ROAD, GARDEN CITY, GA 31408 • PHONE: (912) 954-2622 • FAX: (912) 954-0858

EXHIBIT "A"