

Before the
Surface Transportation Board

ENTERED
Office of Proceedings JR - 12
May 3, 2016
Part of
Public Record

STB DOCKET NO. AB-167 (Sub-No. 1189X)

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN HUDSON COUNTY, NJ**

STB DOCKET NO. AB-55 (Sub-No. 686X)

**CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION –
IN HUDSON COUNTY, NJ**

STB DOCKET NO. AB-290 (Sub-No. 306X)

**NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE
EXEMPTION – IN HUDSON COUNTY, NJ**

**JAMES RIFFIN’S MOTION TO STRIKE THE CITY’S, ET. AL’S
MAY 2, 2016 MOTION TO COMPEL RIFFIN TO RESPOND TO
THE CITY’S, ET. AL.’S MARCH 28, 2016 DISCOVERY REQUEST**

1. Comes now James Riffin, who herewith files his Motion to Strike the Motion to Compel that was filed by Charles Montange, counsel for the City of Jersey City, the Rails to Trails Conservancy, and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively “**Montange**”), and in support hereof states:

2. 49 CFR 1104.8 states that the Surface Transportation Board (“**STB**”) “may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document.”

3. Riffin argues that the entirety of Montange's May 2, 2016 Motion to Compel ("**Motion to Compel**") should be stricken, for the entirety of the Motion to Compel is "redundant, irrelevant, immaterial, impertinent, or scandalous," and was filed for "improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." FRCP Rule 11(b)(1).

4. In a decision served on **May 22, 2015**, at p. 8, the STB admonished the parties **not to file** any 'unnecessary' pleadings.

5. Montange has filed two 'unnecessary' pleadings so far in 2016: A premature Petition for Review, and the current Motion to Compel.

6. The Petition for Review clearly was 'frivolous:'

A. Montange sought review of the STB's **November 2, 2015** decision which stated, at pp. 3-4, that if Montange files an Offer of Financial Assistance ("**OFA**") at some future date (if and when the STB permits OFAs to be filed), then Montange's OFA must address the four criteria set out in the STB's **May 26, 2009** decision at p. 2-3. (Shipper support; feasibility; profitability; community support.)

B. The STB's **November 2, 2015** order **was not** a 'final order.' (It did not conclude this proceeding.)

C. Montange failed to offer **any argument** to justify filing his Petition for Review of an interlocutory order.

D. Riffin argues that it was Montange's **failure to offer any argument** in support of his Petition for Review of an interlocutory order, that caused his Petition for Review to become a frivolous pleading. (Patently meritless, no colorable claim, no *reasonable basis* for believing that the claims would generate an issue of fact for the fact finder, not an innovative or tenuous legal theory that was not embraced by the court.)

E. Montange's Petition for Review caused both the STB, and the LLCs, considerable expense, all for naught.

7. Riffin elected not to enter that fray. Riffin has assiduously tried not to attack any of Mr. Montange's filings (other than when Montange attacks any of Riffin's filings).

8. The Motion to Compel was also clearly frivolous:

A. Montange e-mailed his discovery request to Riffin on March 28, 2016. Montange also sent a hard copy to Riffin via first class mail, which arrived April 2, 2016.

B. Montange quite arbitrarily picked April 19, 2016, as the date by which he wanted a response.

C. On March 30, 2016, Riffin acknowledged receipt of Montange's discovery request. Riffin cautioned Montange that Daniel Horgan, counsel for the LLCs ("**Horgan**"), could seek similar discovery from Montange, if Montange persisted with his discovery request. Riffin further indicated that he would formally reply by Montange's April 19, 2016 date.

D. Riffin totally forgot about Montange's discovery request. (Such is what happens when one gets past 70, and Riffin is past 70.)

E. On April 20, 2016, Montange sent Riffin an e-mail, **trying** to remind Riffin that Riffin's response was due on April 19, 2016. On April 26, Montange sent Riffin another e-mail, **trying** to remind Riffin that Riffin's response was overdue. Riffin actually saw these two e-mails on **April 28, 2016**. (Eric Strohmeyer telephoned Riffin on April 28, 2016, and told Riffin that Montange was getting agitated since Montange had not received Riffin's response. That was when Riffin remembered about Montange's discovery request.)

- F. Riffin has told the world, in multiple filings, that Riffin does not have internet service at his residence, and that Riffin only looks at his e-mail if someone telephones Riffin and tells Riffin that he needs to look at his e-mail. (Riffin does not have, nor does he ever want to have, a ‘Smart Phone,’ which is capable of sending and receiving e-mail, or a telephone which is capable of ‘texting,’ or engaging in any other form of ‘social media.’)
- G. On Thursday, April 28, 2016, at 2:11 pm EDT, Riffin e-mailed Montange. Riffin thanked Montange for reminding him about Montange’s discovery request, and indicated that Riffin would try to respond by Friday, April 29, 2016.
- H. Riffin typed his discovery request. After finishing his response, Riffin remembered that Montange had complained to the STB about Riffin e-mailing Riffin’s pleadings to Montange. See Montange’s **September 14, 2015** Motion to Strike at pp. 2-3, where Montange stated:

“City et al **have never** consented to email **service** on City et al by Riffin or any other party to this proceeding. To the contrary, City et al **have requested service of paper copies.**” Bold added.

Having remembered how adamant Montange was about getting paper copies via first class mail, Riffin placed his response into an envelope, put postage on the envelope, then placed the envelope into a mail box.

- I. On the following Monday, May 2, 2016, at about 4 pm, Riffin had occasion to visit a local library. While there, he took the time to look at his e-mail. He noted he had an e-mail from Mr. Strohmeyer, which had an attachment. The attachment was a copy of Mr. Strohmeyer’s pleading supporting Montange’s Motion to Compel. There was no e-mail copy of Montange’s Motion to Compel. Montange’s Motion to Compel was not posted on the STB’s web site. So Riffin called Mr. Strohmeyer, and asked Mr. Strohmeyer to read to Riffin, Montange’s Motion to Compel, which he did.

9. Since Riffin in fact mailed his response on **April 29, 2016** (when he placed his envelope addressed to Montange into a USPS mail box), the very same day that he said he would send it, there is **no basis whatsoever** for Montange's **May 2, 2016** Motion to Compel.

10. The Motion to Compel asks the STB to compel Riffin to respond. **Riffin responded BEFORE the Motion to Compel was even filed.** The requested 'remedy' (compel Riffin to respond), is not a remedy that the STB can provide. In a court, that would be automatic grounds to dismiss a complaint. It likewise should be automatic grounds to dismiss Montange's Motion to Compel.

11. If Montange feels that Riffin's response was not to Montange's satisfaction, then Montange could, if he so desired, file a new Motion to Compel, detailing precisely why he is entitled to more information than Riffin has provided.

CONFIDENTIAL INFORMATION

12. Some time ago, Pace Glass executed a Verified Statement wherein Pace Glass indicated that it desired rail service in Jersey City. The Pace Glass Verified Statement was submitted to the STB under seal. A protective order was issued. Horgan attempted to lift the protective order. The STB held that the name of the shipper, and the quantity of material the shipper desired to ship, were 'confidential,' and should not / could not be disclosed, or used, in any other proceedings, unless submitted under seal.

13. Riffin participated in Norfolk Southern's ("NS") FD 35873 proceeding. (NS sought, and received, authority to acquire 282 miles of Delaware and Hudson line.) Riffin filed, in the Third Circuit, a Petition for Review of the STB's FD 35873 decision. The STB challenged Riffin's right to file his Petition for Review in the Third Circuit. The STB argued that Riffin had no 'business interests' in the Third Circuit.

14. Riffin responded, by detailing his ‘business interests’ in New Jersey and in Pennsylvania. In his pleading, Riffin discussed Pace Glass’ desire for freight rail service.

15. Riffin attempted to submit his pleading ‘under seal.’ His pleading was clearly marked: “Confidential.” Riffin asked for a protective order, to keep his pleading ‘sealed.’

16. On **February 4, 2016**, the Third Circuit issued its Order, wherein it:

A. Transferred Riffin’s Petition for Review to the D.C. Circuit; and

B. **Denied** Riffin’s request for a protective order, holding that the information in Riffin’s confidential pleading, **did not meet** the criteria for ‘confidential’ material.

17. On Tuesday, **March 29**, 2016, at 12:22 pm (a bit past noon), Riffin **filed** a Petition for Writ of Certiorari in the Supreme Court, asking the Supreme Court to review the Third Circuit’s order transferring Riffin’s Petition for Review to the D.C. Circuit. Riffin’s Petition was **docketed** on **March 30, 2016**.

18. Included in the Appendix of Riffin’s Petition for Certiorari, was a copy of Riffin’s Confidential Third Circuit pleading.

19. Riffin sent a courtesy copy of his Petition for Certiorari to Charles Montange.

20. Charles Montange photocopied several pages from Riffin’s Petition for Certiorari, then appended those pages to his Motion to Compel.

21. Charles Montange attempted to redact Pace Glass’ name from what he submitted.

22. Charles Montange missed one: In paragraph 12, on p. 77 of Riffin’s Petition for Certiorari.

23. Riffin argues: The Third Circuit ruled that the name of the shipper, Pace Glass, **was not confidential information**. That ruling trumps the STB's ruling that the name of the shipper, was confidential information.

24. There is a doctrine called the "law of the case." That doctrine states that if a court rules on an issue which was not raised as an issue, and which no party asked the court to address, that ruling will apply if the non-issue issue becomes an issue at a later time.

25. So while no one has asked a U.S. Circuit Court of Appeals to address the issue of whether Pace Glass' name should have been kept confidential, the Third Circuit has addressed the issue, and issued its ruling on this issue: Pace Glass' name is not 'confidential.'

26. And then Charles Montange discloses Pace Glass' name in a very public pleading placed on the STB's web site.

27. Up until the time Charles Montange put Pace Glass' name on the STB's web site, it was highly unlikely that anyone would have known that Pace Glass was the putative shipper. (Other than those who have a copy of the Pace Glass Verified Statement. Riffin knows about Pace Glass, for Riffin actually met with officials of Pace Glass regarding their desire for freight rail service.)

28. The other thing that Montange attempted to redact, was the Net Liquidation Value ascribed to the fee simple real property underlying the Harsimus Branch that Conrail still retains. Conrail, in a **June 1, 2015** filing, disclosed that the average price for the real property that it held in fee, was a bit less than **\$18,000 an acre**, (\$17,835.82), see p. 5, that the **minimum amount** of fee simple real property that would need to be conveyed in an OFA proceeding would be **1.24 acres**, see p. 5, that the total net liquidation value of that portion of Conrail's fee simple real property that was subject to the OFA process, was **\$22,109.51**, and that the Net Liquidation Value for the easement impressed on the Embankment Properties, was Zero Dollars. See p. 5.

29. The Net Liquidation Value information is decidedly not confidential. (Nor should it be.)

30. WHEREFORE, for the foregoing reasons, Riffin would pray that the STB **strike** Montange's May 2, 2016 Motion to Compel, and for such other and further relief as would be appropriate.

Respectfully,

James Riffin
P. O. Box 4044
Timonium, MD 21094
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 4th Day of May, 2016, a copy of the foregoing Motion to Strike was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.