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Date: August 24, 2016

Case: Consolidated Rail Corporation, Abandonment Exemption, Hudson
County, New Jersey

Docket No. AB 167 (Sub No. 1189X)
AB 55 (Sub No. 686X)
AB 290 (Sub No. 306X)



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BEFORE THE SURFACE TRANSPORTATION BOARD

- - - - -X

Consolidated Rail Corporation, : Docket Number
Abandonment Exemption, : AB 167
Hudson County, New Jersey. :

- - - - -X

CSX Transportation, : Docket Number
Discontinuation of Service, : AB 55
Hudson County, New Jersey. :

- - - - -X

Norfolk Southern, : Docket Number
Discontinuation of Service, : AB 290
Hudson County, New Jersey. :

- - - - -X

STATUS CONFERENCE

Washington, D.C.

Wednesday, August 24, 2016

BEFORE:

HONORABLE JOHN P. DRING
ADMINISTRATIVE LAW JUDGE

REPORTED BY:

SARA A. WICK, RPR, CRR

Page 2

1 Status conference on Wednesday, August 25,
2 2016, before Honorable John P. Dring, in Washington,
3 D.C., at the offices of the Federal Energy
4 Regulatory Commission, 888 First Street Northeast,
5 Hearing Room 1, at 10:00 a.m., when were present on
6 behalf of the respective parties:

7

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12 On behalf of City of Jersey City,

13 Pennsylvania Railroad Harsimus Stem

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1 APPEARANCES (continued):

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1 P R O C E E D I N G S

2 PRESIDING JUDGE: Good morning. My name
3 is Administrative Law Judge John Dring, and I have
4 been appointed by decision served July 5th, 2016, by
5 the Surface Transportation Board to entertain and
6 rule on discovery matters and resolve all disputes
7 concerning discovery in Docket Number AB 167,
8 Consolidated Rail Corporation, Abandonment Exemption
9 in Hudson County, New Jersey, et al.

10 At this point would counsels, please,
11 enter their appearances.

12 MR. MONTANGE: Good morning, Judge Dring.
13 My names is Charles Montange. I'm counsel for the
14 City of Jersey City, the Rails to Trails
15 Conservancy, and the Pennsylvania Railroad Harsimus
16 Stem Embankment Preservation Coalition.

17 This is Andrea Ferster, general counsel
18 for Rails to Trails Conservancy, with me today.

19 MS. FERSTER: Good morning, your Honor.

20 PRESIDING JUDGE: Thank you. Good
21 morning.

22 MR. HORGAN: Your Honor, my name is

Page 6

1 Daniel E. Horgan. The firm is Waters, McPherson,
2 McNeill. And I am counsel for 212 Marin Boulevard,
3 LLC, and then seven additional LLCs. They're in the
4 record. I don't think I need to repeat them.

5 PRESIDING JUDGE: Yes, sir. Thank you
6 very much. I appreciate that.

7 And Mr. Riffin is not here, I see. All
8 right. No one having claimed to be Mr. Riffin, I
9 have to assume he is not here.

10 Yes, Mr. Montange, do you have something
11 to say?

12 MR. MONTANGE: Your Honor, I'm kind of
13 nonplus because I know Mr. Riffin was in town as of
14 11:00 p.m. last night.

15 PRESIDING JUDGE: He's not an
16 indispensable party to this proceeding.

17 MR. MONTANGE: So I don't quite know how
18 to deal with this situation.

19 PRESIDING JUDGE: That's all right, sir.
20 I do. If you have a suggestion, I will entertain
21 it, but I am perfectly capable of taking charge of
22 this matter.

1 MR. MONTANGE: There he is now.

2 PRESIDING JUDGE: All right. Better late
3 than never. Mr. Riffin, I presume?

4 MR. RIFFIN: Yes. Where do you want me to
5 sit, your Honor?

6 PRESIDING JUDGE: Well, if you're more
7 comfortable with the LLCs, you may sit over there
8 after you've put your jacket on, sir. Thank you.
9 We were concerned about you. All right.

10 We are here to entertain City's second
11 motion to compel discovery filed on Mr. Riffin, and
12 I think the nub of the matter here today concerns
13 the relevance. Mr. Riffin has filed a response in
14 which he has stated that he did not think, in
15 effect, that a motion to compel discovery on his
16 financial data that would be supposedly used in some
17 later filing of an OFA would be relevant at this
18 point.

19 Mr. Riffin, I just want to confirm for the
20 record, you have not filed an OFA in this proceeding
21 yet?

22 MR. RIFFIN: Your Honor, no one has filed

Page 8

1 an OFA, and if that ever happens, it won't happen
2 until -- there's a Section 106 historic proceeding
3 going on right now, and until that concludes, the
4 OFA process can't even begin. And there's a lot of
5 things that have to happen before the Board actually
6 says okay, parties, you now have 10 days to file an
7 OFA. And that could be a long time in the future.

8 PRESIDING JUDGE: All right. I understand
9 that. I just wanted to make sure that you have not
10 filed an OFA.

11 MR. RIFFIN: I haven't filed one. Nobody
12 has. We're not allowed to.

13 PRESIDING JUDGE: Fine.

14 MR. RIFFIN: Mr. Montange has asked
15 multiple times can we speed it up, and the
16 Board's -- they stay silent, but the end result is,
17 they're not permitted to do anything.

18 Since I was a little late, and I do
19 apologize for being late, has Mr. Montange indicated
20 to you that we had a meeting last night and we've
21 resolved some of our issues?

22 PRESIDING JUDGE: No. He said he saw you

1 so knew you were in town. He did not know where he
2 were. He expressed some concern for your safety. I
3 suppose that's a fair paraphrase.

4 Who would like to discuss that?

5 MR. MONTANGE: Since we are the moving
6 party, your Honor, I would like to at least begin by
7 setting some stage, and then maybe we can
8 foreshorten the hearing.

9 PRESIDING JUDGE: Very well. Thank you.

10 MR. MONTANGE: Again, I represent City,
11 et al., and I will refer to them generically
12 as "City," just to save the mouthful of all my
13 clients.

14 PRESIDING JUDGE: Yes, sir.

15 MR. MONTANGE: I begin by saying for the
16 record that the Harsimus Branch is the last
17 underutilized transportation quarter that links
18 downtown Jersey City with the fast-growing Journal
19 Square and also provides a corridor which, in
20 addition to other corridors that are underutilized,
21 could reach Secaucus, which is a transportation hub
22 in Northern Jersey City.

Page 10

1 PRESIDING JUDGE: Yes, Mr. Montange. I
2 have read everything that's been filed in this
3 record. And although that is background, I think
4 that anyone who is interested in reading the record
5 at this point understands what the Harsimus Stem
6 Embankment is. And I would appreciate it if you
7 would attempt to address as much as possible the
8 issue before us today.

9 MR. MONTANGE: Okay.

10 PRESIDING JUDGE: Thank you.

11 MR. MONTANGE: Your Honor, in general, the
12 law presumes that parties will cooperate with each
13 other in discovery.

14 We have learned, through a number of
15 sources, that Mr. Riffin has had extensive
16 correspondence and document exchange with the LLCs,
17 their management past and present. There's some
18 confusion on our part now on who is managing and who
19 is the agent, who is directing the LLCs' activities,
20 whether it's Mr. Hyman or his wife, Victoria. We've
21 been told recently that Mr. Hyman no longer is
22 manager of the LLCs because of health issues and

1 that he's resigned, that Victoria Hyman is now the
2 manager, perhaps with someone else. We don't know
3 what the facts are, for sure.

4 But there's been extensive e-mail and,
5 perhaps, other correspondence going on between
6 Mr. Riffin and the LLCs. Mr. Riffin has represented
7 not only to the Surface Transportation Board but to
8 the United States Supreme Court, in pleadings that
9 he's provided me in another case, that he views
10 himself as a backstop for Mr. Hyman to secure
11 control of the embankment properties that are in
12 dispute with the Harsimus Branch and, perhaps, other
13 properties in Jersey City.

14 Any deal that exists or any prospective
15 deal, for that matter, that exists between the
16 developer who wishes to secure the Harsimus Branch
17 in order to convert it to nonrail use -- high-rises,
18 skyscrapers is what he evidently now intends -- any
19 deal between him and an OFA applicant arguably, I
20 think it's very relevant to the proceeding, is
21 subverting a remedy that the Surface Transportation
22 Board is supposed to afford shippers and communities

Page 12

1 seeking to secure a transportation corridor for
2 continued rail use and other allowed public
3 purposes.

4 So it's relevant, and it certainly fits
5 the mode for any kind of discovery request where it
6 could lead to the introduction of admissible
7 evidence.

8 The Surface Transportation Board, your
9 Honor, has a doctrine that discovery is disfavored
10 in abandonment proceedings, but as Mr. Riffin has
11 said -- and I don't agree with everything he just
12 said, but he has indicated that this is a proceeding
13 that is unique, I think, to the annals of the
14 Surface Transportation Board. I have been at this
15 case now for 11 long years.

16 PRESIDING JUDGE: If it didn't start as a
17 unique proceeding, it certainly could be categorized
18 as unique by this point.

19 MR. MONTANGE: Yes. So it's very
20 prolonged. We don't have any schedule in the
21 proceeding for STB decisionmaking. Discovery at
22 this point does not interfere with any STB activity.

1 And in fact, the longer the proceeding goes on, the
2 more of this kind of stuff comes out.

3 And in order to represent my clients,
4 knowing that there are communications going on
5 between Mr. Riffin in which he's trying to align
6 himself to the purposes of Mr. Hyman or the LLCs or
7 some combination thereof, I would be derelict not to
8 seek that information.

9 Now, what has happened most recently is
10 that Mr. Riffin found out that I was coming into
11 town for this, and because -- he found out where I
12 was having dinner last night and was there.

13 PRESIDING JUDGE: The fame has spread to
14 Ithaca, as they said.

15 MR. MONTANGE: He was there; he was there
16 with his computer. He opened up his computer and
17 displayed to me his e-mails.

18 Now, he has the same kind of e-mail system
19 I do, Yahoo!.com. Mine is through Frontier; his is
20 direct. And we are both familiar how you do a
21 search on e-mails. So he did a search
22 putting "Hyman" up at the top and pulled up a whole

Page 14

1 sequence of e-mails. We went down the list until
2 end of 2015, an e-mail exchange. It looked like it
3 was material that was -- I can't remember whether it
4 was material he sent to Hyman or Mr. Hyman sent to
5 him or both, but there was a lot.

6 And because it was a WiFi connection, it
7 was difficult to open. We would have been there all
8 night. We would have been thrown out of the
9 restaurant had I tried to view them there.

10 I imagine that -- he acknowledged to me
11 that he has an e-mail exchange with Victoria Hyman
12 as well. He probably has documents from Mr. Horgan.
13 He probably has documents -- I'm certain he has
14 documents with other attorneys that have been
15 forwarded to him, either by the Hymans or that he's
16 corresponded with directly by e-mail.

17 So the information exists, notwithstanding
18 any representations to the contrary. I've seen it.
19 Mr. Strohmeyer was there with me, who has come in a
20 little late. Eric Strohmeyer is with CNJ Railroad.
21 He was there. He saw it, too.

22 Now, what Mr. Riffin, I think, agreed to

1 do last night was to forward all that e-mail to me
2 by Friday of this week. So he's going to now make
3 available all those e-mails which we sought.

4 PRESIDING JUDGE: And this is correct,
5 Mr. Riffin?

6 MR. RIFFIN: I beg your pardon?

7 PRESIDING JUDGE: This is correct?

8 MR. RIFFIN: Yes, your Honor, it's
9 correct. My suggestion to him last night was I will
10 e-mail him a copy of whatever is there, and I'm also
11 going to send Mr. Horgan a copy so that both of them
12 understand what the other person knows.

13 PRESIDING JUDGE: All right.

14 MR. RIFFIN: The only question I would
15 have -- I was going to ask Mr. Horgan, but I will
16 ask your Honor while I'm here -- would it be
17 appropriate for me to send it to any of the other
18 parties? Does anybody else want to see them? Do I
19 need to send them to anybody else? At the moment,
20 just Mr. Montange and Mr. Horgan --

21 PRESIDING JUDGE: I think that's
22 sufficient. Who do we have here? Someone rising.

Page 16

1 Who is this?

2 MR. JENKINS: My name is Robert Jenkins.
3 I'm counsel for Conrail. If it is of no concern to
4 the other parties, we would be happy to have a copy
5 as well of the e-mails.

6 PRESIDING JUDGE: All right.

7 Mr. Montange, proceed, please. Sorry for
8 the interruption. It's all very interesting.

9 MR. MONTANGE: Yes, it is indeed, your
10 Honor.

11 It is difficult to conduct an orderly
12 proceeding and to engage in discovery when one is
13 confronted with situations like this.

14 On the other hand, he has committed to
15 providing this information by Friday. In thinking
16 about possible outcomes for this hearing today, it
17 occurs to me that it would be helpful, I think, to
18 us if your Honor were to enter an order providing
19 that, by consent of the parties, Mr. Riffin is
20 obligated to do what he has stated here in open
21 court that he will do in connection with his e-mail
22 correspondence, including, as I understand it, all

1 attachments to the e-mail. And if you have deleted
2 any e-mails but you have preserved documents, I
3 would hope that you could provide those as well.

4 Is that agreeable to you?

5 MR. RIFFIN: Well, I will just tell you,
6 when you delete an e-mail, I don't keep anything,
7 and I've learned you can't print e-mails, at least I
8 can't.

9 PRESIDING JUDGE: If it's deleted and you
10 can't retrieve it, under the terms of Mr. Montange's
11 suggestion, you would not be obligated to hand it
12 over. You can't do something that you can't do.

13 MR. RIFFIN: Whatever is in my e-mail
14 account, I have agreed I will give him a copy. I
15 will send a copy to Mr. Jenkins also. He's
16 expressed an interest.

17 In terms of time, he wants it by Friday.
18 If I get back to a library where I have FiOS, that
19 will speed the process up. He will probably have it
20 on his e-mail account before he gets home.

21 PRESIDING JUDGE: Very good. I will enter
22 an order to that.

Page 18

1 MR. RIFFIN: I don't object if your Honor
2 wants to enter an order. I don't think it's
3 necessary. If you want to --

4 PRESIDING JUDGE: I will do it.

5 Let me just digress a bit here. I do not
6 intend to spend anymore time on this case than is
7 absolutely necessary, and that is, time entertaining
8 arguments on discovery.

9 As anyone knows, in the Federal Energy
10 Regulatory Commission practice, I am very used to
11 having my orders complied with fully by parties, and
12 in the rare instances where parties have not
13 complied, I have issued sanctions.

14 And I would certainly entertain the notion
15 in this case of sanctioning anyone who does not
16 comply fully and on a timely basis with any order
17 that I will issue in this case. And my idea of
18 sanctions -- you probably know, Mr. Riffin, under
19 the regulations what the sanctions are, and I'm not
20 limiting myself to one. I may issue all of the
21 sanctions.

22 So just keep that in mind, when you agree

1 to do something and I order you to do something,
2 it's going to be done, or there are consequences.

3 Mr. Montange, did you have something else?

4 MR. MONTANGE: Your Honor, the
5 conversations that I had with Mr. Riffin last
6 evening were essentially limited to the e-mails, the
7 correspondence that he's had with Mr. Riffin --
8 between Riffin and the Hyman interests, let me say.

9 One other aspect of the discovery we
10 sought was into Mr. Riffin's bankruptcy proceedings.
11 And in that, he said that anything would be in
12 records of courts.

13 I guess that -- there have been several
14 Riffin bankruptcies. I've attempted to find the
15 records, the final orders in those bankruptcies.

16 PRESIDING JUDGE: He referred to a program
17 called PACER. Is that what you're referring to?

18 MR. MONTANGE: Yes, he referred to PACER
19 ECF. You have to kind of -- it seems like you have
20 to know the docket numbers and so on, and I think
21 I've gotten all of the docket numbers, but I'm not
22 sure.

Page 20

1 And it would be at least helpful if we had
2 sufficient documents to indicate -- from him that
3 would indicate that I've got the relevant dockets.
4 And if I could just get the final orders from him in
5 his bankruptcy proceedings, discharge orders or
6 whatever, that would allow us to examine those
7 files.

8 PRESIDING JUDGE: I read these arguments
9 in the written pleadings, Mr. Riffin, and it did
10 make sense to me, as Mr. Montange explained in
11 writing, that while he can go into PACER and obtain
12 documents, he's not certain and there can be no
13 certainty that he can obtain all of them through
14 PACER.

15 Can you help him with that?

16 MR. RIFFIN: He's listed two cases. I
17 believe he listed a 10 -- I don't remember what the
18 number is, but it's under James Riffin. That's my
19 primary case. He listed another case. I think that
20 was the WMS case, and I believe there's a BRL case.
21 I don't remember what the numbers are.

22 PRESIDING JUDGE: All right.

1 MR. RIFFIN: I don't have a problem with
2 telling him what the numbers are, although I think
3 it's his duty to go find it. But I will verify the
4 two numbers he has indicated in one of his
5 pleadings, yes, they are two of the three numbers.
6 I believe there were three.

7 PRESIDING JUDGE: All right.

8 MR. RIFFIN: So if he wants me to verify
9 numbers, I will do that. They're public documents.
10 So he has the right to go to them. But I still
11 don't think they're relevant.

12 PRESIDING JUDGE: Well, I understand the
13 relevance argument, and if we want to get into that,
14 we can. But given that he has -- that these are
15 public documents and he has two of the three, I
16 would think it would probably be in everyone's
17 interest to give him the third number.

18 MR. RIFFIN: I have no objection to
19 looking it up when I get home.

20 PRESIDING JUDGE: Would you do that,
21 please.

22 MR. RIFFIN: Yes. I just have to look in

Page 22

1 my computer and see what the number was.

2 PRESIDING JUDGE: All right. I will enter
3 that agreement as well in my order. Thank you very
4 much.

5 MR. RIFFIN: I will tell him the three
6 numbers for the three bankruptcy cases. My goal and
7 my desire is to try to limit how much time you have
8 to spend doing what we're doing today.

9 PRESIDING JUDGE: That's very good. I
10 think you just saved us all a lot of time with
11 regard to the relevance arguments. I was fully
12 prepared to go into that. It may have been
13 enlightening for a lot of people. But if we don't
14 have to do it, this is not my purpose, to teach
15 here.

16 Mr. Montange?

17 MR. MONTANGE: Your Honor, with those
18 agreements, I'm content to be satisfied. And
19 Mr. Horgan is rising.

20 PRESIDING JUDGE: Mr. Horgan?

21 MR. HORGAN: Yes, your Honor. On behalf
22 of the LLCs, we have no problem certainly with their

1 voluntary agreement. If Mr. Riffin wants to give
2 Mr. Montange or everybody whatever he wants to give,
3 that's up to him, and we have no objection to that,
4 per se.

5 The objection we raised in this case
6 concerned what you just mentioned, which was
7 relevance. I understand you're going to enter an
8 order. The order is based on a voluntary agreement.

9 My only concern is that that order then
10 not be used in any proceeding before the STB as the
11 basis to argue that those documents are relevant
12 because you're making a finding.

13 PRESIDING JUDGE: I would not anticipate
14 that that would be the case.

15 Mr. Montange, I think I hear you saying
16 that you will be satisfied with getting these
17 documents, and we will see where they lead. Is that
18 correct?

19 MR. MONTANGE: That is correct, your
20 Honor.

21 PRESIDING JUDGE: So you need not worry
22 about entering any of these documents into the STB

Page 24

1 proceeding before the Board right now. You may want
2 to do that later if you can --

3 MR. MONTANGE: I have no idea what the
4 documents -- I have a glimmer of what some of the
5 documents should say, because I have received copies
6 through discovery against CNJ Railroad of some
7 documents. That's why I know they exist.

8 I view them as potentially relevant on
9 issues in the case --

10 PRESIDING JUDGE: Not necessarily with
11 regard to an OFA that may at some point be filed,
12 Mr. Riffin may file. This is a tangled web here. I
13 trust you're looking for these documents for other
14 purposes, multiple purposes?

15 MR. MONTANGE: I'm looking for them for
16 multiple purposes. There have been allegations of
17 fraudulent misrepresentations and all sorts of --

18 PRESIDING JUDGE: Yes, I know. It looks
19 like one of my wife's soap operas.

20 MR. MONTANGE: Sorry, your Honor.

21 PRESIDING JUDGE: I'm well versed, at
22 least with the written summaries, of the intrigue

1 that's been going on in this case and some of the
2 personal history of some of the participants.

3 MR. MONTANGE: If we get documents that we
4 feel are relevant to an issue in the case,
5 ordinarily what happens in STB practice is they get
6 attached to a pleading. And then the other side may
7 contest the relevance or not contest the relevance,
8 and STB can decide to do what it wishes in terms of
9 whether it considers the issue or not.

10 All we are about is -- or we view these
11 kinds of things, the inquiry into possible
12 fraudulent use of STB procedures or abuse of STB
13 procedures, as a relevant issue.

14 And I might add, I believe that Conrail
15 and the LLCs likewise view abuse of STB processes or
16 remedies as a relevant issue.

17 And I believe the STB itself takes the
18 view that an abuse of its processes or abuse of its
19 jurisdiction or abuse of its remedies should not be
20 allowed.

21 PRESIDING JUDGE: It would be axiomatic.
22 An administrative body working against itself cannot

Page 26

1 stand, to paraphrase the Bible.

2 MR. MONTANGE: Thank you, your Honor.

3 MR. HORGAN: Your Honor, I think there's
4 one additional issue that is raised not in what is
5 immediately before you but from your comment.

6 I have three separate discovery requests
7 that have been served on the LLCs by Mr. Montange.
8 The deadline to respond to two of them is this
9 Saturday, and some of those discovery requests and
10 questions are, I think, exactly what Mr. Riffin and
11 Mr. Montange have agreed to and are talking about.

12 PRESIDING JUDGE: Shall we winnow that
13 down based on today's proceeding? Is that what you
14 suggest now? Why don't we do that?

15 MR. HORGAN: If we can do that --

16 PRESIDING JUDGE: Yes, we can, if it's all
17 right with Mr. Montange, because there is a
18 procedural deadline here, and I don't want this to
19 be construed as somehow prejudicing his use of time
20 in some way. If he wants to do that, we can.

21 MR. MONTANGE: I'm not sure what the
22 request is, your Honor. I will say this about the

1 general discovery: Mr. Riffin had previously
2 represented to me that he did not have e-mails that
3 were in accessible form, although he had exchanged
4 e-mails. And in fact, I think Mr. Horgan has
5 acknowledged the e-mail exchanges. And also,
6 Mr. Riffin is uncertain what he has deleted and not
7 deleted. But they exist.

8 There may be documents on the computers of
9 the Hymans, the LLCs, attorneys for the LLCs that
10 relate to correspondence between Mr. Riffin and
11 Mr. Hyman.

12 We view those as relevant and needed in
13 the proceeding. Whether they appear -- if they've
14 been deleted or if Mr. Riffin no longer has them, we
15 would like to see them from these guys.

16 And they -- again, I would be derelict not
17 to go after these things after I've been told they
18 exist.

19 PRESIDING JUDGE: Well, Mr. Horgan, would
20 this be an administrative burden for you to
21 produce -- assuming you are going to produce such
22 e-mails, for you to produce e-mails that are

Page 28

1 duplicative of what Mr. Riffin has agreed to and
2 will produce?

3 MR. HORGAN: I don't know what he's going
4 to produce, but I can assume from the discussion
5 that of course, if he's sending e-mails --

6 PRESIDING JUDGE: Why don't you wait and
7 take a look, then?

8 MR. HORGAN: Well, I can't, because I have
9 a deadline. There's two issues, your Honor,
10 actually.

11 One is, quite frankly, we have the same
12 relevance issues, and it would be a burden because
13 this is not a large company. This is an
14 individually owned business, and there could be
15 thousands of these things, number 1.

16 Number 2, Mr. Riffin, while he's got one
17 computer, there have been numerous attorneys
18 representing the LLCs since the beginning of this.
19 There might be 10 or 12 different lawyers. It would
20 be all over the lot.

21 But that's only some of the discovery
22 request. Our intent, so I can be completely

1 forthright about this, is we have objections to all
2 of the discovery requests which we would otherwise
3 serve in a timely fashion, at the end of the week,
4 except one. I guess we have objection to that.
5 Which is simply that Mr. Hyman is no longer the
6 manager because of health reasons, what Mr. Montange
7 has already acknowledged.

8 But we have some serious concerns that
9 this is going to, quite frankly, take this soap
10 opera into additional seasons and reruns, and that's
11 what we're concerned about, quite frankly.

12 PRESIDING JUDGE: Go ahead.

13 MR. MONTANGE: Your Honor, if I might, the
14 document request, which would encompass the e-mails,
15 are not due until September 2nd, as I recall.

16 MR. HORGAN: That's right.

17 MR. MONTANGE: We had an e-mail exchange,
18 and I tendered some requests for admissions and
19 interrogatories, mainly to find out who is managing
20 the LLCs so we could determine, on seeing these
21 e-mails back and forth, who is making
22 representations for the LLCs, who is making -- what

Page 30

1 the relationship is. It's hard to know what's going
2 on over there.

3 PRESIDING JUDGE: It seems to me that this
4 whole discussion is a bit premature, because
5 Mr. Horgan, you have stated that you will respond to
6 Mr. Montange's requests with objections. And
7 typically, what would happen in that situation, the
8 two of you would discuss your objections, and if
9 these requests are overly broad or unduly
10 burdensome, perhaps Mr. Montange can winnow them
11 down or provide additional granularity that will
12 reduce the burden on you.

13 Typically, counsels work together on these
14 things and only come before the judge with a
15 discovery dispute when you can't work it out. I
16 have seen nothing so far to suggest that this is
17 impossible for the two of you to work out.

18 MR. HORGAN: I don't disagree with that,
19 your Honor. We've tried to address this. We've
20 been working on this in different ways trying to
21 reach stipulations and so forth. And maybe with
22 today's proceedings and maybe with the materials he

1 gets from Mr. Riffin, positions will change. I
2 don't know.

3 PRESIDING JUDGE: Well, why don't we just
4 wait and see.

5 MR. HORGAN: That's fine, your Honor.

6 PRESIDING JUDGE: I feel it's
7 inappropriate for me to act on this right now. At
8 first, I thought perhaps I might be of some
9 assistance, but I think it's better for the two of
10 you to work it out and see where we go with it.

11 MR. HORGAN: Your Honor, my only purpose
12 of raising this is to put it on the record so that
13 if we do wind up back here, you are not saying to me
14 or to him or to all of us why didn't you tell me
15 about this.

16 PRESIDING JUDGE: I appreciate that. That
17 suggests to me that you've been before judges with
18 less rational approaches to life than mine, but
19 that's all right. I can understand that.

20 MR. HORGAN: If I may not respond to
21 that --

22 PRESIDING JUDGE: Excellent, Mr. Horgan,

Page 32

1 excellent.

2 MR. HORGAN: Thank you.

3 MR. RIFFIN: Your Honor, if I might make a
4 point.

5 PRESIDING JUDGE: Yes.

6 MR. RIFFIN: Mr. Horgan is sort of dancing
7 around it, but he hasn't directly asked you. So I
8 will make the suggestion, maybe perhaps on his
9 behalf.

10 He's indicated he's got a deadline of
11 Saturday. It's going to take a little while for all
12 this to happen. I might suggest that the parties
13 sort of agree to extend that deadline maybe a week
14 or so.

15 PRESIDING JUDGE: Well, that's the Board's
16 decision, isn't it? That's a Board deadline.

17 MR. MONTANGE: The deadline for the
18 document discovery is not this Saturday. It is
19 September 2nd, I believe, which will give you some
20 time to look. And I've said that I would give a
21 courtesy extension.

22 MR. HORGAN: You're correct on that. The

1 other two items --

2 MR. MONTANGE: The interrogatories and
3 requests for admission, yes.

4 MR. HORGAN: -- are this Saturday. You're
5 correct about documents for September 2nd.

6 MR. MONTANGE: They are by and large
7 independent of giving the documents, I think.

8 PRESIDING JUDGE: That's fine. I see no
9 reason to entertain changing the date.

10 MR. MONTANGE: Your Honor, just for the
11 record, I would note that I do not believe that a
12 Section 106 compliance in any way slows down STB's
13 administration of the OFA remedy. In past
14 proceedings, the OFA remedy has been pursuant to a
15 time schedule that has its own course and
16 supplants --

17 PRESIDING JUDGE: I've seen that, yes.

18 MR. MONTANGE: Very good. Thank you.

19 PRESIDING JUDGE: Do we have anything else
20 to discuss today? Mr. Riffin?

21 MR. RIFFIN: I haven't heard Mr. Montange
22 discuss the other request he had of me. He wanted

Page 34

1 all my financial records, presumably to see if I had
2 enough cash to actually buy this in the event it
3 actually became available to buy.

4 PRESIDING JUDGE: Let me -- I wasn't going
5 to get into this necessarily, but you've opened the
6 door. Since I will be on this case for discovery
7 purposes until you don't have anymore discovery
8 disputes, let me at least give you my understanding
9 of the financial responsibility component of the OFA
10 process.

11 Now, Mr. Riffin, I don't need for you to
12 respond to any of this, but the record shows that
13 you have an understanding or a belief that \$23,000
14 will stand you in good stead in meeting the
15 requirements for financial responsibility, and
16 you've said you have it in the bank and you can take
17 people to the bank and see it.

18 That's all well and good. However, I
19 think that the Board would be interested in a
20 balance of accounts approach to that. I mean, you
21 may have \$23,000 in the bank, but you may owe \$1
22 million, in which case the \$23,000 really won't help

1 you very much.

2 The other factor in this process is, in
3 determining financial responsibility, the Board does
4 anticipate a real estate assessment. Now, there is
5 record evidence or supposition at least expressed in
6 the record that the six blocks in Jersey City, New
7 Jersey, may have a market value of \$60 million.

8 And if that's the case, I think that this
9 presents a strong suggestion that even a clear and
10 free \$23,000 in the bank would not be sufficient to
11 meet the requirements that the Board would have to
12 show financial responsibility.

13 Now, I say this only because if you do
14 file an OFA and Mr. Montange or anyone else
15 questions the sufficiency of that, we may be back
16 here before me to try to determine what information
17 may be relevant. And in that context, I think that
18 your financials would certainly be relevant, all of
19 your financials.

20 I don't think that that requires any
21 comment on your part, because I'm talking about my
22 view of the regulations and how I would conduct any

Page 36

1 proceeding that -- any additional further discovery
2 dispute that involves the support you may file for
3 an OFA.

4 All right. You have something to say.

5 MR. RIFFIN: My response would be, your
6 Honor, on June 1, pursuant to an order of the Board,
7 Conrail was required to disclose to the Board and
8 the parties what the purchase price would be for the
9 entirety of the Harsimus branch. And Conrail
10 responded on page 5 of that, and if you would
11 like --

12 PRESIDING JUDGE: They responded zero, I
13 believe.

14 MR. RIFFIN: The total price for the
15 entirety to the end of the line, mile post 1.34, is
16 \$22,109.51.

17 PRESIDING JUDGE: All right.

18 MR. RIFFIN: And if Conrail says this is
19 what the net liquidation value is, that's what it
20 is.

21 PRESIDING JUDGE: Okay. Well, Mr. Riffin,
22 we do engage in substantial financial discussions

1 here at the FERC, and in my experience, nothing is
2 as simple as what you've just stated. I didn't just
3 fall off the turnip truck. So I'm not going to
4 accept your \$23,000 statement.

5 All I'm telling you is how I'm going to
6 probably view these issues, should they arise. And
7 I'm doing that gratuitously as a favor to you and
8 everybody else so you don't create more problems for
9 yourself than you need to.

10 All right. You don't have to say anything
11 about that. I'm explaining it to you.

12 Mr. Montange, do you have anything else to
13 say before we leave here today?

14 MR. MONTANGE: Your Honor, other than to
15 state that Mr. Riffin only speaks for himself, I'm
16 not going to try to join issue on what's required
17 for OFAs or not. We look forward to your order.

18 PRESIDING JUDGE: We escaped that today,
19 didn't we?

20 MR. MONTANGE: We did, and I'm happy to
21 have done so. And hopefully, this will conclude the
22 discovery disputes in the proceeding. I will

Page 38

1 discuss with Mr. Horgan concerning the pending stuff
2 to see if we can work out something. And if we
3 can't, unfortunately, we may have to visit you
4 again.

5 PRESIDING JUDGE: I would like to agree
6 with you, although I'm reminded of the little boy
7 that has the shovel and he's digging through the
8 pile of excrement because he's looking for his pony.

9 Having said that, are we finished for
10 today?

11 MR. HORGAN: Yes, your Honor. We have
12 nothing further.

13 MR. RIFFIN: Nothing further.

14 MR. MONTANGE: Thank you.

15 PRESIDING JUDGE: Thank you very much for
16 attending, and it's been a pleasure to meet you all.
17 We are off the record.

18 (Whereupon, at 10:38 a.m., the status
19 conference was concluded.)
20
21
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, SARA WICK, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

Commission Expires: NOVEMBER 14, 2017

A a.m 2:5 38:18 AB 1:3,5,7 5:7 abandonment 1:3 5:8 12:10 absolutely 18:7 abuse 25:12,15,18 25:18,19 accept 37:4 accessible 27:3 account 17:14,20 accounts 34:20 acknowledged 14:10 27:5 29:7 act 31:7 action 39:12,16 activities 10:19 activity 12:22 add 25:14 addition 9:20 additional 6:3 26:4 29:10 30:11 36:1 address 10:7 30:19 administration 33:13 administrative 1:18 5:3 25:22 27:20 admissible 12:6 admission 33:3 admissions 29:18 aferster@railstot... 2:20 afford 11:22 agent 10:19 agree 12:11 18:22 32:13 38:5 agreeable 17:4 agreed 14:22 17:14 26:11 28:1 agreement 22:3 23:1,8 agreements 22:18 ahead 29:12 al 5:9 9:11 align 13:5 allegations 24:16 allow 20:6 allowed 8:12 12:2 25:20 Andrea 2:17 5:17 annals 12:13 anticipate 23:13 35:4 anybody 15:18,19 anymore 18:6 34:7 apologize 8:19	appear 27:13 appearances 3:1 4:1 5:11 appears 39:5 applicant 11:19 appointed 5:4 appreciate 6:6 10:6 31:16 approach 34:20 approaches 31:18 appropriate 15:17 arguably 11:19 argue 23:11 argument 21:13 arguments 18:8 20:8 22:11 asked 8:14 32:7 aspect 19:9 assessment 35:4 assistance 31:9 assume 6:9 28:4 assuming 27:21 attached 25:6 attachments 17:1 attempt 10:7 attempted 19:14 attending 38:16 attorney 39:14 attorneys 14:14 27:9 28:17 August 1:13 2:1 available 15:3 34:3 Avenue 4:5 axiomatic 25:21 B back 17:18 29:21 31:13 35:15 background 10:3 backstop 11:10 balance 34:20 bank 34:16,17,21 35:10 bankruptcies 19:14 19:15 bankruptcy 19:10 20:5 22:6 based 23:8 26:13 basis 18:16 23:11 beg 15:6 beginning 28:18 behalf 2:6,12,21 3:8 3:15 4:8 22:21 32:9 belief 34:13 believe 20:17,20	21:6 25:14,17 32:19 33:11 36:13 better 7:2 31:9 Bible 26:1 bit 18:5 30:4 blocks 35:6 Board 1:1 5:5 8:5 11:7,22 12:8,14 24:1 32:16 34:19 35:3,11 36:6,7 Board's 8:16 32:15 body 25:22 Boulevard 3:8 6:2 boy 38:6 branch 9:16 11:12 11:16 36:9 BRL 20:20 broad 30:9 Brown 3:11 burden 27:20 28:12 30:12 burdensome 30:10 business 28:14 buy 34:2,3 C C 2:17 5:1 called 19:17 capable 6:21 case 11:9 12:15 18:6 18:15,17 20:19,19 20:20,20 23:5,14 24:9 25:1,4 34:6 34:22 35:8 cases 20:16 22:6 cash 34:2 categorized 12:17 certain 14:13 20:12 certainly 12:4,17 18:14 22:22 35:18 certainty 20:13 CERTIFICATE 39:1 certify 39:4 change 31:1 changing 33:9 charge 6:21 Charles 2:8 5:13 City 2:12,12 5:14 5:14 9:10,12,18 9:22 11:13 35:6 City's 7:10 claimed 6:8 clear 35:9 clients 9:13 13:3 CNJ 4:4,8 14:20	24:6 cnjrail@yahoo.com 4:7 Coalition 2:14 5:16 Columbia 39:21 com 13:19 combination 13:7 come 14:19 30:14 comes 13:2 comfortable 7:7 coming 13:10 comment 26:5 35:21 Commission 2:4 18:10 39:22 committed 16:14 communications 13:4 communities 11:22 company 28:13 compel 7:11,15 completely 28:22 compliance 33:12 complied 18:11,13 comply 18:16 component 34:9 computer 13:16,16 22:1 28:17 computers 27:8 concern 9:2 16:3 23:9 concerned 7:9 23:6 29:11 concerning 5:7 38:1 concerns 7:12 29:8 conclude 37:21 concluded 38:19 concludes 8:3 conduct 16:11 35:22 conference 1:10 2:1 38:19 confirm 7:19 confronted 16:13 confusion 10:18 connection 14:6 16:21 Conrail 16:3 25:14 36:7,9,18 consent 16:19 consequences 19:2 Conservancy 2:15 2:21 5:15,18 considers 25:9 Consolidated 1:2 3:15 5:8	construed 26:19 content 22:18 contest 25:7,7 context 35:17 continued 2:22 3:1 3:18 4:1 12:2 contrary 14:18 control 11:11 conversations 19:5 convert 11:17 cooperate 10:12 copies 24:5 copy 15:10,11 16:4 17:14,15 Corporation 1:2 3:16 4:4,8 5:8 correct 15:4,7,9 23:18,19 32:22 33:5 corresponded 14:16 correspondence 10:16 11:5 16:22 19:7 27:10 corridor 9:19 12:1 corridors 9:20 counsel 5:13,17 6:2 16:3 39:11,14 counsels 5:10 30:13 County 1:3,5,7 5:9 course 28:5 33:15 court 2:18 11:8 16:21 courtesy 32:21 courts 19:12 create 37:8 CRR 1:22 CSX 1:4 D D 5:1 D.C 1:12 2:3,19 3:13 dancing 32:6 Daniel 3:3 6:1 data 7:16 date 33:9 days 8:6 deadline 26:8,18 28:9 32:10,13,16 32:17 deal 6:18 11:14,15 11:19 decide 25:8 decision 5:4 32:16 decisionmaking 12:21
---	--	--	--	--

dehorgan@laww... 3:7	24:5,7,13 25:3 27:8 33:5,7	evidently 11:18 exactly 26:10	finding 23:12 fine 8:13 31:5 33:8	granularity 30:11 gratuitously 37:7
delete 17:6	doing 22:8,8 37:7	examine 20:6	finished 38:9	guess 19:13 29:4
deleted 17:1,9 27:6 27:7,14	door 34:6	excellent 31:22 32:1	FiOS 17:18	guys 27:15
deposition 39:4,6,9 39:12	downtown 9:18	exchange 10:16 14:2,11 29:17	firm 6:1	
derelict 13:7 27:16	Dring 1:17 2:2 5:3 5:12	exchanged 27:3	first 2:4 31:8	H
desire 22:7	due 29:15	exchanges 27:5	fits 12:4	H 2:8
determine 29:20 35:16	duly 39:6	excrement 38:8	Floor 2:18	hand 16:14 17:11
determining 35:3	Dunellen 4:6	Exemption 1:3 5:8	foregoing 39:3,5	happen 8:1,5 30:7 32:12
developer 11:16	duplicative 28:1	exist 24:7 27:7,18	foreshorten 9:8	happened 13:9
different 28:19 30:20	duty 21:3	exists 11:14,15 14:17	form 27:3	happens 8:1 25:5
difficult 14:7 16:11	E	experience 37:1	forth 29:21 30:21	happy 16:4 37:20
digging 38:7	E 3:3 5:1,1 6:1	Expires 39:22	forthright 29:1	hard 30:1
digress 18:5	e-mail 11:4 13:18 14:2,11,16 15:1	explained 20:10	forward 15:1 37:17	Harsimus 2:13 5:15 9:16 10:5 11:12 11:16 36:9
dinner 13:12	15:10 16:21 17:1 17:6,13,20 27:5 29:17	explaining 37:11	forwarded 14:15	health 10:22 29:6
direct 13:20	e-mails 13:17,21 14:1 15:3 16:5	expressed 9:2 17:16 35:5	found 13:10,11	hear 23:15
directing 10:19	17:2,7 19:6 27:2,4 27:22,22 28:5 29:14,21	extend 32:13	frankly 28:11 29:9 29:11	heard 33:21
direction 39:8	ECF 19:19	extension 32:21	fraudulent 24:17 25:12	hearing 2:5 9:8 16:16
directly 14:16 32:7	effect 7:15	extensive 10:15 11:4	free 35:10	help 20:15 34:22
disagree 30:18	either 14:15	F	Friday 15:2 16:15 17:17	helpful 16:17 20:1
discharge 20:5	embankment 2:14 5:16 10:6 11:11	fact 13:1 27:4	Frontier 13:19	hereto 39:15
disclose 36:7	employed 39:11,14	factor 35:2	fully 18:11,16 22:11	high-rises 11:17
Discontinuation 1:5 1:7	employee 39:14	facts 11:3	further 36:1 38:12 38:13 39:13	historic 8:2
discovery 5:6,7 7:11 7:15 10:13 12:5,9 12:21 16:12 18:8 19:9 24:6 26:6,9 27:1 28:21 29:2 30:15 32:18 34:6 34:7 36:1 37:22	encompass 29:14	fair 9:3	future 8:7	history 25:2
discuss 9:4 30:8 33:20,22 38:1	Energy 2:3 18:9	fall 37:3	G	home 17:20 21:19
discussion 28:4 30:4	engage 16:12 36:22	fame 13:13	G 5:1	Honor 5:19,22 6:12 7:5,22 9:6 10:11 12:9 15:8,16 16:10,18 18:1 19:4 22:17,21 23:20 24:20 26:2 26:3,22 28:9 29:13 30:19 31:5 31:11 32:3 33:10 36:6 37:14 38:11
discussions 36:22	enlightening 22:13	familiar 13:20	general 5:17 10:11 27:1	Honorable 1:17 2:2
disfavored 12:9	enter 5:11 16:18 17:21 18:2 22:2 23:7	far 30:16	generically 9:11	hope 17:3
displayed 13:17	entering 23:22	fashion 29:3	getting 23:16	hopefully 37:21
dispute 11:12 30:15 36:2	entertain 5:5 6:20 7:10 18:14 33:9	favor 37:7	give 17:14 21:17 23:1,2 32:19,20 34:8	Horgan 3:3 5:22 6:1 14:12 15:11,15,20 22:19,20,21 26:3 26:15 27:4,19 28:3,8 29:16 30:5 30:18 31:5,11,20 31:22 32:2,6,22 33:4 38:1,11
disputes 5:6 34:8 37:22	entertaining 18:7	Federal 2:3 18:9	given 21:14 39:10	hub 9:21
District 39:21	entirety 36:9,15	feel 25:4 31:6	giving 33:7	Hudson 1:3,5,7 5:9
docket 1:2,4,6 5:7 19:20,21	Eric 4:3 14:20	FERC 37:1	glimmer 24:4	Hyman 10:20,21 11:1,10 13:6,22 14:4,4,11 19:8 27:11 29:5
dockets 20:3	escaped 37:18	Ferster 2:17 5:17,19	go 20:11 21:3,10 22:12 27:17 29:12 31:10	
doctrine 12:9	ESQ 2:8,17 3:3,10	Fifth 2:18	goal 22:6	
document 10:16 29:14 32:18	essentially 19:6	file 8:6 24:12 35:14 36:2	goes 13:1	
documents 14:12,13 14:14 17:2 20:2 20:12 21:9,15 23:11,17,22 24:4	estate 35:4	filed 7:11,13,20,22 8:10,11 10:2 24:11	going 8:3 11:5 13:4 15:2,11,15 19:2 23:7 25:1 27:21 28:3 29:9 30:1 32:11 34:4 37:3,5 37:16	
	et 5:9 9:11	files 20:7	good 5:2,12,19,20 17:21 22:9 33:18 34:14,18	
	evening 19:6	filing 7:17	gotten 19:21	
	event 34:2	final 19:15 20:4		
	everybody 23:2 37:8	financial 7:16 34:1 34:9,15 35:3,12 36:22		
	everyone's 21:16	financially 39:15		
	evidence 12:7 35:5	financials 35:18,19		
		find 19:14 21:3 29:19		

Hymans 14:15 27:9	judge 1:18 5:2,3,12 5:20 6:5,15,19 7:2 7:6 8:8,13,22 9:9 9:14 10:1,10 12:16 13:13 15:4 15:7,13,21 16:6 17:9,21 18:4 19:16 20:8,22 21:7,12,20 22:2,9 22:20 23:13,21 24:10,18,21 25:21 26:12,16 27:19 28:6 29:12 30:3 30:14 31:3,6,16 31:22 32:5,15 33:8,17,19 34:4 36:12,17,21 37:18 38:5,15	list 14:1 listed 20:16,17,19 little 8:18 14:20 32:11 38:6 LLC 3:8 6:3 LLCs 6:3 7:7 10:16 10:22 11:6 13:6 22:22 25:15 26:7 27:9,9 28:18 29:20,22 LLCs' 10:19 LLP 3:11 long 8:7 12:15 longer 10:21 13:1 27:14 29:5 look 21:22 28:7 32:20 37:17 looked 14:2 looking 21:19 24:13 24:15 38:8 looks 24:18 lot 8:4 14:5 22:10 22:13 28:20	5:13 6:10,12,17 7:1 8:14,19 9:5,10 9:15 10:1,9,11 12:19 13:15 15:20 16:7,9 19:3,4,18 20:10 22:16,17 23:2,15,19 24:3 24:15,20 25:3 26:2,7,11,17,21 29:6,13,17 30:10 32:17 33:2,6,10 33:18,21 35:14 37:12,14,20 38:14 Montange's 17:10 30:6 morning 5:2,12,19 5:21 motion 7:11,15 mouthful 9:12 moving 9:5 multiple 8:15 24:14 24:16	number 1:2,4,6 5:7 10:14 20:18 21:17 22:1 28:15,16 numbers 19:20,21 20:21 21:2,4,5,9 22:6 numerous 28:17 NW 2:9
I	J	K	N	O
idea 18:17 24:3 III 3:10 imagine 14:10 immediately 26:5 impossible 30:17 inappropriate 31:7 including 16:22 independent 33:7 indicate 20:2,3 indicated 8:19 12:12 21:4 32:10 indispensable 6:16 individually 28:14 information 13:8 14:17 16:15 35:16 inquiry 25:11 instances 18:12 intend 18:6 intends 11:18 intent 28:22 interest 17:16 21:17 interested 10:4 34:19 39:16 interesting 16:8 interests 19:8 interfere 12:22 interrogatories 29:19 33:2 interruption 16:8 intrigue 24:22 introduction 12:6 involves 36:2 issue 10:8 18:17,20 25:4,9,13,16 26:4 37:16 issued 18:13 issues 8:21 10:22 24:9 28:9,12 37:6 items 33:1 Ithaca 13:14	judges 31:17 July 5:4 June 36:6 jurisdiction 25:19	keep 17:6 18:22 kind 6:12 12:5 13:2 13:18 19:19 kinds 25:11 knew 9:1 know 6:13,17 9:1 11:2 18:18 19:20 24:7,18 28:3 30:1 31:2 knowing 13:4 knows 15:12 18:9	N 5:1 name 5:2,22 16:2 names 5:13 necessarily 24:10 34:5 necessary 18:3,7 need 6:4 15:19 23:21 34:11 37:9 needed 27:12 neither 39:10 net 36:19 never 7:3 New 1:3,5,7 3:6 4:6 5:9 35:6 night 6:14 8:20 13:12 14:8 15:1,9 nonplus 6:13 nonrail 11:17 Norfolk 1:6 North 4:5 Northeast 2:4 Northern 9:22 Northwest 2:18 3:12 Notary 39:1,20 note 33:11 notion 18:14 notwithstanding 14:17 NOVEMBER 39:22 nub 7:12	object 18:1 objection 21:18 23:3,5 29:4 objections 29:1 30:6 30:8 obligated 16:20 17:11 obtain 20:11,13 occurs 16:17 OFA 7:17,20 8:1,4 8:7,10 11:19 24:11 33:13,14 34:9 35:14 36:3 OFAs 37:17 officer 39:3 offices 2:3 okay 8:6 10:9 36:21 open 14:7 16:20 opened 13:16 34:5 opera 29:10 operas 24:19 order 11:17 13:3 16:18 17:22 18:2 18:16 19:1 22:3 23:8,8,9 36:6 37:17 orderly 16:11 orders 18:11 19:15 20:4,5 ordinarily 25:5 outcome 39:16 outcomes 16:16 overly 30:9 owe 34:21 owned 28:14
J	K	L	M	P
jacket 7:8 James 4:10 20:18 Jenkins 3:10 16:2,2 17:15 Jersey 1:3,5,7 2:12 3:6 4:6 5:9,14 9:18,22 11:13 35:6,7 John 1:17 2:2 5:3 join 37:16 Journal 9:18	large 28:13 33:6 late 7:2 8:18,19 14:20 law 1:18 5:3 10:12 lawyers 28:19 lead 12:6 23:17 learned 10:14 17:7 leave 37:13 library 17:18 life 31:18 Lighting 3:5 likewise 25:15 limit 22:7 limited 19:6 limiting 18:20 line 36:15 links 9:17 liquidation 36:19	knowing 13:4 knows 15:12 18:9	making 23:12 29:21 29:22 management 10:17 manager 10:22 11:2 29:6 managing 10:18 29:19 Marin 3:8 6:2 market 35:7 material 14:3,4 materials 30:22 matter 6:22 7:12 11:15 matters 5:6 Mayer 3:11 McNeill 3:4 6:2 McPherson 3:4 6:1 mean 34:20 meet 35:11 38:16 meeting 8:20 34:14 mentioned 23:6 mile 36:15 million 34:22 35:7 mind 18:22 mine 13:19 31:18 misrepresentations 24:17 mode 12:5 moment 15:19 Montange 2:8 5:12	P 1:17 2:2 5:1 P.C 3:4 p.m 6:14 PACER 19:17,18 20:11,14 page 36:10 paraphrase 9:3 26:1

pardon 15:6	33:8,17,19 34:4	quarter 9:17	remedies 25:16,19	20:22 21:7,10
part 10:18 35:21	36:12,17,21 37:18	question 15:14	remedy 11:21 33:13	22:2 24:1 26:17
participants 25:2	38:5,15	questions 26:10	33:14	29:16 31:7,19
parties 2:6 8:6	presumably 34:1	35:15	remember 14:3	36:4,17 37:10
10:12 15:18 16:4	presume 7:3	quite 6:17 28:11	20:17,21	rising 15:22 22:19
16:19 18:11,12	presumes 10:12	29:9,11	reminded 38:6	rmjenkins@maye...
32:12 36:8 39:12	previously 27:1		repeat 6:4	3:14
39:15	price 36:8,14	R	REPORTED 1:21	Robert 3:10 16:2
party 6:16 9:6	primary 20:19	R 5:1	REPORTER 39:1	Room 2:5
pending 38:1	print 17:7	rail 1:2 3:15 4:4,8	represent 9:10 13:3	RPR 1:22
Pennsylvania 2:13	pro 4:10	5:8 12:2	representations	rule 5:6
5:15	probably 14:12,13	Railroad 2:13 5:15	14:18 29:22	
people 22:13 34:17	17:19 18:18 21:16	14:20 24:6	represented 11:6	S
perfectly 6:21	37:6	Rails 2:15,21 5:14	27:2	S 4:3 5:1
permitted 8:17	problem 21:1 22:22	5:18	representing 28:18	safe 9:12
person 15:12	problems 37:8	raised 23:5 26:4	request 12:5 26:22	safety 9:2
personal 25:2	procedural 26:18	raising 31:12	28:22 29:14 33:22	sanctioning 18:15
pile 38:8	procedures 25:12	rare 18:12	requests 26:6,9 29:2	sanctions 18:13,18
pleading 25:6	25:13	rational 31:18	29:18 30:6,9 33:3	18:19,21
pleadings 11:8 20:9	proceed 16:7	reach 9:21 30:21	required 36:7 37:16	SARA 1:22 39:3
21:5	proceeding 6:16	read 10:2 20:8	requirements 34:15	satisfied 22:18
please 5:10 16:7	7:20 8:2 11:20	reading 10:4	35:11	23:16
21:21	12:12,17,21 13:1	real 35:4	requires 35:20	Saturday 26:9
pleasure 38:16	16:12 23:10 24:1	really 34:22	reruns 29:10	32:11,18 33:4
point 5:10 7:18 10:5	26:13 27:13 36:1	reason 33:9	resigned 11:1	saved 22:10
12:18,22 24:11	37:22	reasons 29:6	resolve 5:6	saw 8:22 14:21
32:4	proceedings 12:10	recall 29:15	resolved 8:21	saying 9:15 23:15
pony 38:8	19:10 20:5 30:22	received 24:5	respective 2:6	31:13
positions 31:1	33:14	record 6:4 7:20 9:16	respond 26:8 30:5	says 8:6 36:18
possible 10:7 16:16	process 8:4 17:19	10:3,4 31:12	31:20 34:12	schedule 12:20
25:11	34:10 35:2	33:11 34:12 35:5	responded 36:10,12	33:15
post 36:15	processes 25:15,18	35:6 38:17 39:9	response 7:13 36:5	se 4:10 23:4
potentially 24:8	produce 27:21,21	records 19:12,15	responsibility 34:9	search 13:21,21
practice 18:10 25:5	27:22 28:2,4	34:1	34:15 35:3,12	seasons 29:10
prejudicing 26:19	program 19:16	reduce 30:12	restaurant 14:9	Seattle 2:10
premature 30:4	prolonged 12:20	reduced 39:8	result 8:16	Secaucus 3:6 9:21
prepared 22:12	properties 11:11,13	refer 9:11	retrieve 17:10	second 7:10
present 2:5 10:17	prospective 11:14	referred 19:16,18	Riffin 4:10 6:7,8,13	Section 8:2 33:12
presents 35:9	provide 17:3 30:11	referring 19:17	7:3,4,11,13,19,22	secure 11:10,16
Preservation 2:14	provided 11:9	regard 22:11 24:11	8:11,14 10:15	12:1
5:16	provides 9:19	regulations 18:19	11:6,6 12:10 13:5	see 6:7 15:18 22:1
preserved 17:2	providing 16:15,18	35:22	13:10 14:22 15:5	23:17 27:15 31:4
PRESIDING 5:2,20	public 12:2 21:9,15	Regulatory 2:4	15:6,8,14 16:19	31:10 33:8 34:1
6:5,15,19 7:2,6	39:1,20	18:10	17:5,13 18:1,18	34:17 38:2
8:8,13,22 9:9,14	pulled 13:22	relate 27:10	19:5,7,8,14 20:9	seeing 29:20
10:1,10 12:16	purchase 36:8	related 39:11	20:16,18 21:1,8	seek 13:8
13:13 15:4,7,13	purpose 22:14	relationship 30:1	21:18,22 22:5	seeking 12:1
15:21 16:6 17:9	31:11	relative 39:13	23:1 24:12 26:10	seen 14:18 30:16
17:21 18:4 19:16	purposes 12:3 13:6	relevance 7:13	27:1,6,10,14 28:1	33:17
20:8,22 21:7,12	24:14,14,16 34:7	21:13 22:11 23:7	28:16 31:1 32:3,6	send 15:11,17,19
21:20 22:2,9,20	pursuant 33:14	25:7,7 28:12	33:20,21 34:11	17:15
23:13,21 24:10,18	36:6	relevant 7:17 11:20	36:5,14,18,21	sending 28:5
24:21 25:21 26:12	put 7:8 31:12	12:4 20:3 21:11	37:15 38:13	sense 20:10
26:16 27:19 28:6	putting 13:22	23:11 24:8 25:4	Riffin's 19:10	sent 14:4,4
29:12 30:3 31:3,6		25:13,16 27:12	right 6:8,19 7:2,9	separate 26:6
31:16,22 32:5,15	Q	35:17,18	8:3,8 15:13 16:6	September 29:15

32:19 33:5 sequence 14:1 serious 29:8 serve 29:3 served 5:4 26:7 Service 1:5,7 setting 9:7 seven 6:3 shippers 11:22 shorthand 39:7 shovel 38:7 show 35:12 shows 34:12 side 25:6 silent 8:16 simple 37:2 simply 29:5 sir 6:5,19 7:8 9:14 sit 7:5,7 situation 6:18 30:7 situations 16:13 six 35:6 skyscrapers 11:18 slows 33:12 soap 24:19 29:9 Sorry 16:7 24:20 sort 32:6,13 sorts 24:17 sought 15:3 19:10 sources 10:15 Southern 1:6 speaks 37:15 speed 8:15 17:19 spend 18:6 22:8 spread 13:13 Square 9:19 stage 9:7 stand 26:1 34:14 start 12:16 state 37:15 stated 7:14 16:20 30:5 37:2 statement 37:4 States 11:8 status 1:10 2:1 38:18 stay 8:16 STB 12:21,22 23:10 23:22 25:5,8,12 25:12,15,17 STB's 33:12 stead 34:14 Stem 2:13 5:16 10:5 stipulations 30:21 Street 2:4,9 3:12 Strohmeyer 4:3	14:19,20 strong 35:9 stuff 13:2 38:1 substantial 36:22 subverting 11:21 sufficiency 35:15 sufficient 15:22 20:2 35:10 suggest 26:14 30:16 32:12 suggestion 6:20 15:9 17:11 32:8 35:9 suggests 31:17 Suite 4:5 summaries 24:22 supplants 33:16 support 36:2 suppose 9:3 supposed 11:22 supposedly 7:16 supposition 35:5 Supreme 11:8 sure 8:9 11:3 19:22 26:21 Surface 1:1 5:5 11:7 11:21 12:8,14 sworn 39:6 system 13:18 T take 28:7 29:9 32:11 34:16 taken 39:4,7,13 takes 25:17 talking 26:11 35:21 tangled 24:12 teach 22:14 tell 17:5 22:5 31:14 telling 21:2 37:5 tendered 29:18 terms 17:10,17 25:8 testimony 39:5,6,10 Thank 5:20 6:5 7:8 9:9 10:10 22:3 26:2 32:2 33:18 38:14,15 thereof 13:7 things 8:5 25:11 27:17 28:15 30:14 think 6:4 7:12,14 10:3 11:20 12:13 14:22 15:21 16:17 18:2 19:20 20:19 21:2,11,16 22:10 23:15 26:3,10	27:4 31:9 33:7 34:19 35:8,17,20 thinking 16:15 third 21:17 thought 31:8 thousands 28:15 three 21:5,6,15 22:5 22:6 26:6 thrown 14:8 time 8:7 17:17 18:6 18:7 22:7,10 26:19 32:20 33:15 timely 18:16 29:3 times 8:15 today 5:18 7:12 10:8 16:16 22:8 33:20 37:13,18 38:10 today's 26:13 30:22 told 10:21 27:17 top 13:22 total 36:14 town 6:13 9:1 13:11 Trails 2:15,21 5:14 5:18 transportation 1:1 1:4 5:5 9:17,21 11:7,21 12:1,8,14 tried 14:9 30:19 truck 37:3 true 39:9 trust 24:13 try 22:7 35:16 37:16 trying 13:5 30:20 turnip 37:3 two 20:16 21:4,5,15 26:8 28:9 30:8,17 31:9 33:1 typewriting 39:8 typically 30:7,13 U uncertain 27:6 understand 8:8 15:12 16:22 21:12 23:7 31:19 understanding 34:8 34:13 understands 10:5 underutilized 9:17 9:20 unduly 30:9 unfortunately 38:3 unique 12:13,17,18 United 11:8 use 11:17 12:2	25:12 26:19 V value 35:7 36:19 verify 21:3,8 versed 24:21 Victoria 10:20 11:1 14:11 view 14:9 24:8 25:10,15,18 27:12 35:22 37:6 views 11:9 visit 38:3 voluntary 23:1,8 W wait 28:6 31:4 want 7:4,19 15:18 18:3 21:13 24:1 26:18 wanted 8:9 33:22 wants 17:17 18:2 21:8 23:1,2 26:20 Ward 2:18 Washington 1:12 2:2,10,19 3:13 wasn't 34:4 Waters 3:4 6:1 way 3:5 26:20 33:12 ways 30:20 we're 8:12 22:8 29:11 we've 8:20 10:20 30:19,19 web 24:12 Wednesday 1:13 2:1 week 15:2 29:3 32:13 went 14:1 WICK 1:22 39:3 wife 10:20 wife's 24:19 WiFi 14:6 wind 31:13 winnow 26:12 30:10 wishes 11:16 25:8 witness 39:5,7,10 WMS 20:20 work 30:13,15,17 31:10 38:2 working 25:22 30:20 worry 23:21 writing 20:11 written 20:9 24:22	 X x 1:2,4,6,8 Y Yahoo 13:19 years 12:15 Z zero 36:12 0 07096 3:6 08812 4:6 1 1 2:5 28:15 34:21 36:6 1.34 36:15 10 8:6 20:17 28:19 10:00 2:5 10:38 38:18 106 8:2 33:12 11 12:15 11:00 6:14 12 28:19 14 39:22 162nd 2:9 167 1:3 5:7 191 4:5 1999 3:12 2 2 28:16 20006 3:13 20037 2:19 201-330-7453 3:7 2015 14:2 2016 1:13 2:2 5:4 2017 39:22 202-263-3261 3:14 202-974-5142 2:20 206-546-1936 2:11 212 3:8 6:2 2121 2:18 22,109.51 36:16 23,000 34:13,21,22 35:10 37:4 238 4:5 24 1:13 25 2:1 290 1:7 2nd 29:15 32:19 33:5 3 300 3:5
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4 426 2:9 5 5 36:10 55 1:5 5th 5:4 6 60 35:7 7 8 888 2:4 9 908-361-2435 4:7 98177 2:10				
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