

221 581

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

UPDATE
UNAUTHORIZED REMOVAL OF BRIDGE AND TRACK MATERIAL

1. On January 25, 2008, Raymond B. English and James Riffin ("E&R"), filed a Request to Establish Conditions and Compensation for Financial Assistance ("Request"). On February 4, 2008, E&R filed a Supplement to their Request to Establish Conditions and Compensation for Financial Assistance ("Supplement"), informing the Board that on January 30, 2008 individuals employed in the Warren County Road Department unlawfully began removing the railroad bridge that had carried the Line over Glass Road at MP 229.80 ("Bridge"). In their Supplement, E&R stated they would provide the Board with additional information as it became available.

2. On February 7, 2008, the *Vicksburg Post* ran another article concerning the removal of the Glass Road railroad bridge. A copy of the written portion of this article was labeled **Exhibit A**, and was appended to the February 8, 2008 Statement of David C. Reeves, Associate General Counsel for the Kansas City Southern Railway Company ("KCSR"), which Statement was appended to KCSR's February 8, 2008 letter to the Board. Accompanying the 2/7/08 *Vicksburg Post* Glass Road bridge article, was a photograph depicting what is left of the Glass Road bridge. Attached to this Update as **Exhibit M**, is a copy of the 2/7/08 *Vicksburg Post* article together with a photograph of what is left of the bridge. To view photographs of the bridge as of the Effective Date of the Purchase and Sale Agreement between the City of Vicksburg ("City") and KCSR, the reader is directed to KCSR's photographs 14 - 16, which appear in Exhibit 4 of KCSR's Environmental and Historic Report. (Photograph 14 is eleven pages from the end of KCSR's August 23, 2007 Abandonment Petition for Exemption.)

3. On February 5, 2008, KCSR sent a letter to Melvin Clemens, Director of the Board's Office of Compliance & Consumer Assistance section ("Clemens Letter"), a copy of which KCSR attached to its February 8, 2008 letter to the Board. In its Clemens Letter, KCSR stated:

"He [Mr. George, President of the Warren County Board of Supervisors] confirmed that the work did in fact cease shortly after he received Mr. Reeves' phone call and that very few parts of the bridge were removed."

"It is unfortunate that Mr. Riffin's letter, while accurate in some aspects, completely misrepresents the story on other aspects. Indeed, his statement that the "unauthorized removal of this railroad bridge is particularly egregious" appears to have been made to deliberately mislead you into believing that the bridge had in fact been removed when such was not the case." (Emphasis added.)

4. The photograph that accompanied the 2/7/08 *Vicksburg Post* Glass Road bridge article clearly shows the vast majority of the Glass Road railroad bridge was removed prior to the demolition work stopping. The only thing that is left, are the two steel beams that previously had supported the bridge timbers and track material on the center span. Both approaches to the bridge, comprising at least four spans, were removed in their entirety, including the pilings. All of the bridge timbers, guide rails, and walkway, were removed. In its present state, the bridge appears to be structurally unstable, since both of the center span's lateral supports have been removed. Riffin would argue, the photograph clearly demonstrates that a lot more than "a few parts of the bridge were removed," and would further argue that he was not attempting to mislead Mr. Clemens, or the Board, when he stated in his February 4, 2008 letter to Mr. Clemens: "The Glass Road railroad bridge that was removed is located at MP 229.80 on the Vicksburg Industrial Lead."

5. On February 4, 2008, E&R asked Bobby Carpenter, a Mississippi professional engineer, who is the president of Carpenter Engineering, Inc., to inspect the Glass Road bridge, then provide E&R with an estimate of what it would cost to reconstruct the Glass Road bridge. The following day Mr. Carpenter faxed a letter to Raymond B. English, a copy of which is attached hereto and labeled **Exhibit N**. In Mr. Carpenter's letter, he stated his preliminary estimated cost to reconstruct the Glass Road bridge would be **\$1.5 million**, which cost would include requisite surveying, engineering and construction costs.

6. On page 2 of the Clemens Letter, KCSR stated:

- A. "Indeed, the right-of-way, bridge, and track upon it all remain an active line of railroad subject to the STB's jurisdiction." P.1.
- B. **"At the time, the KCSR local representative apparently told Warren County that it could take down the bridge if it did so at its own expense."** P.2.
- C. "Mr. George [president of the Warren County Board of Supervisors] freely admits that they **began this work based solely on the prior understanding** from "more than several year ago" and without recontacting KCSR personnel." P.2.
- D. "Likewise, KCSR stands willing and able to provide common carrier service over the bridge in accordance with STB precedent, **even if that means restoring tracks or replacing parts of the bridge.**" P.2.

7. On page two of KCSR's February 8, 2008 letter to the Board, KCSR stated:

- A. "Neither Mr. Riffin's request to set terms and conditions nor KCSR's evidence in reply placed any positive value on the bridge or its component parts."
- B. "If Mr. Riffin were to acquire the bridge pursuant to his offer of financial assistance, his payment would not include any value for the bridge."
- C. "He would get what KCSR **has today**; a bridge with missing parts – nothing less and nothing more – and he wouldn't have paid anything for it."
- D. "Currently he has no ownership interest in the property which would entitle him to any remedy."

8. In *1411 Corporation – Abandonment Exemption – In Lancaster County, Pa*, Docket No. AB 581 (Sub No. 0X), Served **April 12, 2002**, on p. 4 the Board stated:

"... the parties will be directed to proceed with the sale of the line under terms and conditions comparable to those terms and conditions stipulated in the Shawnee/Colonial Purchase Contract, except where a provision in the Shawnee/Colonial Purchase contract plainly is inapplicable."

9. In *1411 Corporation – Abandonment Exemption – In Lancaster County, Pa*, Docket No. AB 581 (Sub No. 0X), Served **October 18, 2001**, in footnote 14, the Board stated:

"14. The Applicants cannot choose to exclude the turnouts. Sahd **has a statutory right to acquire all of the assets that are on this line**. See *Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH and Darlington, PA* ... Docket No. AB 556 (Sub-No.2X) (STB served Oct. 4, 2000) ... " (Emphasis added.)

10. In *1411 Corporation – Abandonment Exemption – In Lancaster County, Pa*, Docket No. AB 581 (Sub No. 0X), Served April 12, 2002, in footnote 8, the Board stated:

“8. Apparently the Applicants removed certain grade crossing signs at the request of the Commonwealth of Pennsylvania before filing for abandonment. Because the Shawnee /Colonial Purchase Contract, on which we based the purchase price, did not require the transfer of these grade crossing signs, we will not order Applicants to pay to restore them.”

11. KCSR has admitted, “At the time, the KCSR local representative apparently told Warren County that it could take down the bridge if it did so at its own expense.” P.2 of Clemens Letter.

12. Paragraph 1 of the Purchase and Sale Agreement (“PSA”) between KCSR and the City of Vicksburg, specifically states the City has the right to acquire the Entire Property, **including all improvements located thereon**. The Glass Road bridge at MP 229.80 would be considered an “improvement,” and would be considered a part of the realty, since it is firmly attached to the earth. Therefore, per the October 18, 2001 decision in *1411 Corporation*, E&R have “**a statutory right to acquire all of the assets that are on this line,**” including the railroad bridge that had been located at MP 229.80. And since the PSA **did** require the transfer of this improvement, gave the City **a right of specific performance**, and **required KCSR to “maintain the Railway Property in substantially the same condition that it is in upon the Effective Date”** of the PSA [April 5, 2007], then per the April 12, 2002 decision in *1411 Corporation*, the Board is **obligated** to order Applicants to pay to restore the demolished Glass Road railroad bridge. Ordering KCSR to restore the Glass Road railroad bridge would be appropriate even without the PSA, since a “**KCSR local representative apparently told Warren County that it could take down the bridge if it did so at its own expense;**” Warren County “**began this work based solely on the prior understanding;**” and KCSR had failed to seek authority from the Board to abandon the Line, **prior** to granting Warren County permission to remove the Bridge. Furthermore, ordering KCSR to restore the Bridge would not unduly burden KCSR, for KCSR explicitly stated in its Clemens Letter: “KCSR stands willing and able to provide common carrier service over the bridge ... , even if that means restoring tracks or replacing parts of the bridge.”

13. KCSR argued neither Riffin nor KCSR placed any value on the Glass Road bridge. While neither KCSR nor E&R placed a specific value on the Glass road bridge, E&R, KCSR and the City all placed a value on the realty, and all improvements located thereon. The City, had it acquired the Line, would have used the bridge, and all the other bridges and culverts located on the Line, as a part of its trail use. E&R would have used the bridge to carry trains over Glass Road, which trains would service Le Tourneau, whose siding is located immediately south of the Glass Road bridge, and the other industrial users that are located in the vicinity of MP 229.85.¹

14. KCSR argued E&R only have the right to acquire what KCSR “has today, a bridge with missing parts.” E&R would disagree. E&R have the right to acquire all of the assets that the City had the right to acquire. Since the City had the right to acquire all of the improvements that were located on the Line, in substantially the same condition that they were in on April 5, 2007, E&R have that same right. And on April 5, 2007, there was an intact Glass Road railroad bridge, which was specifically identified with three photographs in KCSR’s Abandonment Exemption, and which was capable of supporting trains as they passed over Glass Road.

15. KCSR argued Riffin “has no ownership interest in the property which would entitle him to any remedy.” E&R would disagree. E&R have an equitable interest in the Line, which will be converted into a legal interest once they acquire the Line. Furthermore, since the City has the right to insist on specific performance, to compel transfer of the Line to the City in substantially the same condition it was in on April 5, 2007, and since the terms and conditions of that PSA form the basis for E&R’s Request to Set Terms and Conditions, E&R would argue they do have an “ownership interest in the property which would entitle” them to a remedy. E&R’s ownership

¹ On February 6, 2008, Riffin had a conversation with Mr. Mike Gray, the VP of LeTourneau. LeTourneau builds ocean-going oil drilling rigs. In 2007, LeTourneau attempted to ship steel via rail to its LeTourneau, MS plant. Since KCSR’s predecessor-in-title had removed the track material that previously served LeTourneau’s siding at MP 229.85, LeTourneau attempted to ship steel via rail to Vicksburg, then transload the steel onto a truck, to be trucked from Vicksburg to LeTourneau. The cost of shipping steel via rail to Vicksburg, when coupled with the additional cost associated with transloading the steel onto a truck to be trucked to LeTourneau, exceeded the cost to truck the steel directly from Illinois to LeTourneau. Once E&R acquire the Line, E&R will be able to send rail cars right to LeTourneau’s plant, thereby eliminating the extra transloading costs, and thereby making shipment of steel to LeTourneau via rail cost effective. But to do this, E&R need the railroad bridge that had been located at Glass Road. As the February 7, 2008 Glass Road article in the *Vicksburg Post* stated, there is “increasing industrial use. LeTourneau is nearby and the area is near the Mississippi entry point for the Southeast Supply Header natural gas transmission line, which will extend under the Mississippi River.”

interest is based on both the PSA and 49 U.S.C. §10904.

KCSR'S UNTRUTHFUL REPRESENTATIONS TO THE BOARD

16. On pages 1-2 of KCSR's opening remarks of its January 30, 2008 Reply to E&R's Request to Set Terms and Conditions, KCSR made the following untruthful representations to the Board:

"Petitioners urge the Board ... to penalize KCSR for the fact that its predecessor removed part of the track by directing KCSR to expend an unknown amount to relay that track on a portion of the line where there have been no shippers or requests for common carrier service for almost two decades" (Emphasis added.)

17. On p.12 of KCSR's January 30, 2008 Reply to E&R's Request to Set Terms and Conditions, KCSR reiterated its untruthful representation to the Board:

"...no shipper has ever located on that segment, requested service over the segment"

18. On p.12 of KCSR's January 30, 2008 Reply to E&R's Request to Set Terms and Conditions, KCSR stated:

"Furthermore, now that KCSR has remedied the matter by seeking authority to abandon the Line, there is no basis for the Board to order the reinstallation of track where – (1) there has been no demand for service for at least 15 years, and (2) the Board recently has determined that abandonment of the Line is warranted."

19. KCSR appears to be arguing that if a rail carrier violates 49 U.S.C. §10903 by removing track material, or by authorizing a local government to remove a railroad bridge, the appropriate remedy for this egregious disregard for the Board's regulatory processes, is simply to file an abandonment exemption. That would be analogous to a bank robber saying he should not be prosecuted or incarcerated for bank robbery if he returns the money he took.

20. KCSR attempts to rationalize its unlawful behavior, by untruthfully stating that no shipper along the portion of the Line from which the track material was unauthorizedly removed, has made a demand for service for the past 15 years.

21. In ¶16 of English's 11/20/07 Reply to KCSR's Response to October 16, 2007 Filing of English, English stated in 2001 Hancor, Inc. obtained more than \$800,000 [a \$650,000 Mississippi Community Development Block Grant, plus an additional grant in the amount of \$267,306 from the City of Vicksburg], to construct a rail siding at its plant, which is located near MP 229. English has further stated that in 2001 Hancor requested service from KCSR, and requested permission to connect their proposed rail siding to KCSR's main line near MP 229.

22. Some time ago, English filed a Freedom Of Information Act request with the City of Vicksburg, requesting a copy of the City's Hancor Grant file. On February 5, 2008, the City finally provided English with a copy of the Hancor Grant file. Attached are copies of the grant Hancor received, which grant was to be used to construct a rail siding from the Line to Hancor's plant, which is located near MP 229. In the City's Hancor Grant file, were references to Allen and Hoshall ("A&H"), the engineering company in Jackson, MS, that did the engineering and design work for the Hancor siding. On February 6, 2008, Riffin spoke with Mr. Jim Nelson, the A&H engineer who actually designed the Hancor siding. Mr. Nelson informed Riffin that he had corresponded extensively with KCSR's chief engineer regarding the Hancor siding. He further indicated that he had kept a log of all correspondence with KCSR, and that A&H still had the Hancor-siding file in its archives. He agreed to retrieve the Hancor siding file, then provide E&R with a copy of the file. Mr. Nelson did recall the following salient details:

- A. KCSR made it very clear: Unless Hancor was willing to pay the full cost of replacing the track material that had been unlawfully removed by KCSR's predecessor in title, KCSR would not provide Hancor with rail service.
- B. Hancor was willing to expend \$500,000 of its own money to construct a rail siding to its plant. The State of Mississippi and the City of Vicksburg, were willing to provide an additional \$917,306 in funds, to facilitate construction of Hancor's rail siding.
- C. Hancor, Mississippi and the City of Vicksburg were unwilling to expend untold additional huge sums of money to pay for the cost of replacing the track material that KCSR's predecessor in title had unlawfully removed. [Track material that KCSR had a legal obligation to restore due to its common carrier obligation to maintain its way.]

23. The veracity and credibility of Baker & Miller, and that of KCSR, have been brought into question. A pattern of misrepresentations and deceit in KCSR's filings in this proceeding is beginning to emerge. First, KCSR alleged the Line bisected Lakes Entertainment casino

property. E&R offered proof that Lakes Entertainment casino property was situated entirely west of the Line. KCSR then tried to argue that a 4-car train that traversed the Line once a week, would have an adverse impact on Lakes Entertainment's proposed casino project, would constitute a public safety hazard, would be unsightly, and would unduly vibrate adjacent properties. The Board found these representations to be "uncredible." KCSR stated its CEO, Mike Haverty, never had a personal conversation with J.B. Davenport, the founding partner of Foam Packaging, Inc., regarding the Vicksburg Industrial Lead. Mr. Davenport provided the Board with a Verified Statement in which he gave specific details as to where and when he had spoken with Mr. Haverty. KCSR then represented that no shipper on that portion of the Line from which the track material had been unlawfully removed, had ever requested service during KCSR's ownership of the Line. E&R have documented that as recently as 2001, Hancor did demand service, which KCSR refused to provide. Now we learn that one of KCSR's local representatives gave Warren County permission to remove the Glass Road railroad bridge [providing Warren County did so at its own expense]. And on February 8, 2008, KCSR stated its only obligation under the PSA, was to transfer to the City whatever it possessed **today, rather than on April 5, 2007**, the effective date of the PSA, and further stated that the Glass Road bridge had no value.

24. Over the years, a number of Class I carriers have removed track material without Board or Commission authority.² To date, neither the Commission nor this Board has held any of these carriers accountable for their unauthorized activities. When these unlawful activities have come to light, the Commission and this Board have tacitly condoned these egregious violations of the Board's regulations and applicable federal statutes, by retroactively granting the offending carrier exemption from the Board's regulations. With no penalty being assessed for willfully violating the Board's regulations and statutes, this misconduct continues unabated. Riffin would argue, the Class I carriers are not above reproach, and should be chastised when they disregard the

² *Southern Pacific Transportation Company – Abandonment Exemption – Los Angeles County, CA*, 8 I.C.C. 2d 495 (1992), *Petition to Reconsider*, denied, 9 I.C.C.2d 385 (1993); *Orange County Transp. - Exempt - Atchison, T. & SF. Ry. Co.*, 10 I.C.C. 2d 78 (1994); *Norfolk Southern Railway Company – Abandonment Exemption – In Harriman, Orange County, New York*, STB Docket No. 290 (Sub No. 283X) (2006); *City of Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and New Jersey Assemblyman Louis M. Manzo - Petition for Declaratory Order*, FD 34818 (Served August 9, 2007).

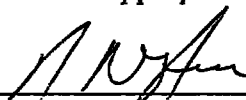
Board's regulations and abuse the Board's processes. Riffin would further argue, if the Board were to order KCSR to restore the track material and Glass Road bridge that had been unauthorizedly removed, that would send a message to all other carriers: If a carrier removes portions of a line of railroad without authority, the carrier **will** have to restore the line. And once this message had been sent, unauthorized removal of track material would no longer occur.

25. On February 5, 2008, in its Clemens Letter, KCSR stated: "KCSR stands willing and able to provide common carrier service over the bridge, ... even if that means restoring tracks or replacing parts of the bridge."

26. WHEREFORE, for the reasons stated above, E&R would ask that the Board:

- A. Order KCSR to restore the track material;
- B. Order KCSR to restore the Glass Road bridge;
- C. Find that the value of the realty must be reduced by the cost to restore the unlawfully dismantled Glass Road railroad bridge;
- D. And for such other and further relief that would be appropriate and just.

Respectfully submitted,


James Riffin


Raymond B. English

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 2008, a copy of the foregoing Update Unauthorized Removal of Bridge and Track Material, was e-mailed and was mailed, postage prepaid, to **William A. Mullins**, Baker & Miller PLLC, Ste 300, 2401 Pennsylvania Ave. N.W., Washington, DC 20037, attorney for Kansas City Southern Railway Company, and was mailed via first class mail, postage prepaid, to **Craig Richey**, 315 W. 3rd Street, Pittsburg, KS 66762, attorney for Vicksburg Southern Railroad, Inc.


James Riffin

FEBRUARY 9, 2008 VERIFIED STATEMENT OF JAMES RIFFIN

1. I am over the age of eighteen and am competent to testify to the matters stated in this Verified Statement.

2. In this Verified Statement, whenever the word "Line" is used, it refers to the line of railroad that lies between MP 225.6 and MP 229.85, is situated in Warren County, Mississippi, and which is the subject of a proceeding before the Surface Transportation Board entitled: *Kansas City Southern Railway Company – Abandonment Exemption – Line in Warren County, MS*, STB Docket No. AB 103 (Sub-No.21X).

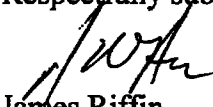
3. On February 6, 2008, I spoke with Jim Nelson, an engineer with the firm of Allen and Hoshall, which is located in Jackson, MS. Mr. Nelson informed me that he was the project engineer for the Hancor, Inc. railroad siding. He further informed me that he remembered the project, he had kept a log of all correspondence and conversations concerning the project, and that the firm still had the Hancor-siding file. He agreed to retrieve the file and to provide me with a copy of the file. He distinctly remembered having a number of conversations with KCSR's Chief Engineer and distinctly remembered that KCSR insisted Hancor must agree to pay for the full cost of restoring the Line prior to KCSR granting Hancor permission to connect Hancor's siding to KCSR's Vicksburg Industrial Lead Line, and prior to KCSR providing rail service to Hancor's facility.

4. On February 7, 2008, I spoke with Mike Gray, Vice President of LeTourneau, Inc. He informed me that LeTourneau manufactures ocean-going oil drilling platforms. He informed me that LeTourneau had asked for rail service from KCSR, and that rail service had been refused, due to the condition of the track. He informed me that in 2007, LeTourneau arranged to ship steel from Illinois to Vicksburg via rail car, then transloaded that steel onto trucks in Vicksburg, then trucked the steel to LeTourneau's plant in LeTourneau, MS. He further informed me that the sum of the cost of shipping the steel via rail to Vicksburg, plus the cost to transload the steel onto trucks and to truck the steel to LeTourneau, MS, exceeded the cost to truck the steel from Illinois directly to LeTourneau's plant in LeTourneau, MS.

5. On February 6, 2008, I spoke with Darryl Rushing, LeTourneau's Director of Transportation. He informed me that LeTourneau had a rail siding that connected to KCSR's main line just south of Glass Road.

6. On February 5, 2008, I looked at a 1996 aerial map of LeTourneau, MS. This aerial map clearly showed a rail siding leading from KCSR's main line in LeTourneau, MS, to LeTourneau's plant beside the Mississippi River.

Respectfully submitted,


James Riffin

VERIFICATION

I, James Riffin, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

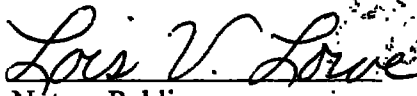
Executed on February 9, 2008.


James Riffin

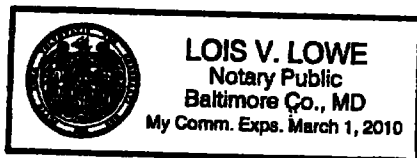
STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

I HEREBY CERTIFY, that on this 9th Day of February, 2008, before me, a Notary Public of said State, personally appeared James Riffin, known to me or satisfactorily proven to be the person whose name is subscribed to the within Verified Statement, and who acknowledged that he executed the same, for the purposes therein contained.

AS WITNESS my hand and notarial seal.


Notary Public

My commission expires: _____



The Vicksburg Post.

SINCE 1883 EVERYTHING A HOMETOWN NEWSPAPER SHOULD BE

Print Page

THURSDAY FEBRUARY 7, 2008 Last modified: Thursday, February 7, 2008 12:32 PM CST



EXHIBIT M-1

A car passes beneath the remnants of a railroad trestle on Glass Road Wednesday. (Joshua Corban * The Vicksburg Post)

Work on Glass Road trestle stopped

By Danny Barrett Jr.

[02/07/08]Brakes have been put on removal of a low rail trestle over Glass Road at the request of Kansas City Southern Railway based on belief the Warren County project might violate federal law.

Overtaken long ago by grass and vegetation, the trestle has not been used by trains in years. District 4 Supervisor Bill Lauderdale, who took office in January, called the overpass a hazard to traffic and ordered it torn down. Preliminaries started last week.

"I thought that since it was on our right of way, we could remove it," Lauderdale said. "Unfortunately, I was wrong."

On paper, KCS still owns the spur that extends south from its main east-west line and likely has the final say on when and whom can remove it.

According to federal regulators, the trestle is five one-hundredths of a mile inside a 4.25-mile area slated for abandonment by the railroad.

The larger situation includes attempts of an area industry, Foam Packaging Inc., to continue rail service to its plant on U.S. 61 South.

A Dec. 12 ruling by the U.S. Surface Transportation Board, an administrative arm of the U.S. Department of Transportation, cleared the way for the plastics and foam container company and a Maryland-based man, James Riffin, to purchase the entire section of rail. That ruling also put the brakes on a deal involving the City of Vicksburg to be the funding conduit that would lead to Lakes Entertainment owning some of the right-of-way or its eventual use as a public area.

Filings in recent weeks with the transportation board show the agency has given Foam Packaging president Raymond B. English and businessman and rail carrier Riffin more time to come up with agreeable dollar figures.

The county's action on Glass Road would not block service to Foam Packaging, which is north of the trestle, but who has rights to do what along the spur.

"Foam Packaging has the absolute right to purchase (the line)," Riffin said, adding Warren County "doesn't have a right" to take down the Glass Road trestle.

In a supplement filed with STB Tuesday and signed by English and Riffin, the two men, in a joint offer, asked the railroad authority to value the rail property at \$4,500 per acre minus the replacement value of the "unlawfully removed Glass Road railroad bridge," plus other unspecified methods of relief termed "other and further relief that would be appropriate and just."

Also contained in the filing is a request to STB to order an investigation as to how Warren County assumed authority to remove the trestle, an act Riffin said violates federal law governing active railroad lines.

In a phone conversation with District 5 Supervisor Richard George, board president, relayed by Riffin to federal officials, numerous conversations were held between the county and KCS over removing the treste and eliminating the 9.5-foot clearance, which even small vehicles pass through with great care.

Wednesday, George and Lauderdale recalled talks with KCS, with Lauderdale saying talks go back a long way. While heeding the call from railroad legal counsel, he said the roadway needs to be cleared for increasing industrial use. LeTourneau is nearby and the area is near the Mississippi entry point for the Southeast Supply Header natural gas transmission line, which will extend under the Mississippi River.

"Already, I've heard people can't get through there," Lauderdale said.

English was not available this week, but in the past has said his firm would face substantially higher costs if it had to truck in raw materials and if periodic rail service was not available. Federal rules place strong emphasis on keeping service to industries that use rails, even if rail companies want to abandon the lines as unprofitable.

The Lakes Entertainment deal, requiring legislative approval, was sought to give the proposed hotel and casino project clear access from U.S. 61 and was considered a done deal by the parties, despite the adverse impact on Foam Packaging. But a New Jersey-based firm, CNJ Rail Corp., provided counsel to Foam Packaging in its efforts to head off the plans of the city and casino company and won its case before the regulatory agency.

Published reports in 2007 showed CNJ active in similar cases nationwide, including a 2.2-mile section of track near Baltimore.

Riffin qualified as a Class III, or short-line, railroad in 2006 after acquiring a spur line from CSX in western Maryland to continue rail service to property he owns. Riffin told the Baltimore City Paper he wants to buy the line to help move Maryland's shipping emphasis off trucks and onto rail. CNJ was a confirmed interest in running the line as a third party.

The transportation board ruled against Riffin in the matter, which has not been appealed to date. STB officials said Wednesday a decision on terms involving the section of track in Warren County is expected in 30 days.

Close Window [x]

EXHIBIT M-2

CARPENTER ENGINEERING, INC.

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

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

February 4, 2008

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

Exhibit N

Dear Mr. English:

We are available to provide basic engineering services associated with reconstruction of a railroad bridge crossing recently removed on Glass Road in Warren County, Mississippi. A preliminary estimated cost for this effort is \$1,500,000 (including surveying, engineering, & construction phases), the anticipated preliminary project scope of which is outlined below:

1. Survey Phase - The services of a local surveying company will be obtained to perform a detailed topographic survey of the existing railroad crossing area, and prepare a detailed drawing showing existing ground elevation contours and existing features.
2. Design Phase - Carpenter Engineering, Inc. will design and prepare construction drawings for the railroad crossing. The construction plans will be submitted for review/approval by railroad, Warren County, and Mississippi Department of Transportation officials (MDOT). The construction storm water, and other appropriate permits (e.g., MDOT and Warren County) will also be obtained.
3. Construction Phase - Carpenter Engineering, Inc. will prepare quantity estimates, and bid documents for use in soliciting bids from prospective bidders, and awarding a contract for completion of the construction project. It is anticipated that the construction project will involve the construction of a new MDOT approved concrete bridge, along with railroad and roadway improvements at the railroad crossing.

The preliminary estimated cost and anticipated project scope provided above is conceptual. A detailed engineering services proposal can be provided upon request, and once the project scope and requirements have been better defined. A more detailed construction cost estimate can also be prepared once final approval of the construction plans has been received.

Carpenter Engineering, Inc. strives to meet each customer's individual requirements, while providing quality engineering services within budget and schedule constraints. Should you have any questions concerning this information, please do not hesitate to contact me at 601-631-0470.

Sincerely,



Bobby G. Carpenter, P.E.
President, Carpenter Engineering, Inc.



Exhibit
0-1

November 6, 2000

The Honorable Robert M. Walker
Mayor of the City of Vicksburg
1401 Walnut Street - Room 300
P.O. Box 150
Vicksburg MS 39181-0150

Dear Mayor Walker:

Subject: Rail Siding -- Loan Funding

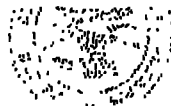
Bob Hauzie, Vice President of Human Resources, has informed me the City of Vicksburg is moving forward with the rail siding extension to Hancor's manufacturing facility located at 5695 Highway 61S, Vicksburg. Total project costs are estimated at \$767,346. The City of Vicksburg will be applying for a loan through the State of Mississippi Economic Development Department for \$500,000. Hancor understands its responsibility and agrees to pay the City of Vicksburg the difference of \$267,346 upon project completion and receipt of the City's invoice.

Thank you for assisting us with this most important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "E. T. Smith", with a long horizontal stroke extending to the right.

E. T. Smith
President



STATE OF MISSISSIPPI
RONNIE MUSGROVE, GOVERNOR
MISSISSIPPI DEVELOPMENT AUTHORITY
JAMES C. BURNS, JR.
EXECUTIVE DIRECTOR

September 17, 2001

*Exhibit
0-2*

RETURN RECEIPT REQUESTED

Honorable Laurence E. Leyens
Mayor
City of Vicksburg
Post Office Box 150
Vicksburg, Mississippi 39181-0150

Dear Mayor Leyens:

SUBJECT: Grant Agreement - City of Vicksburg
Project Number - 01-374-ED-IF01

I am pleased to notify you that three copies of the grant agreement for your approved Community Development Block Grant (CDBG) project are enclosed. Please read the agreement carefully, then sign all three copies, keep one for your files, and return the other two to this office no later than October 1, 2001.

You are also asked to complete and return with your executed contract, a signed Direct Deposit Sign-Up Form (Form 1199A). These forms are required for each grant award to process your "Request for Cash." Forms are available at your local financial institution. A copy has been enclosed for your reference.

At this time you should initiate the following:

(1) ADMINISTRATIVE ACTIVITIES

Administrative services may be performed by the recipient's own staff, the Planning and Development District or a private administrator. In the latter case, the administrator must be selected in accordance with 24CFR PART 85.

Honorable Laurence E. Leyens
September 17 2001

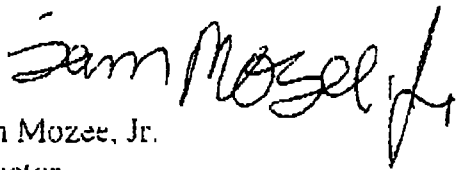
Exhibit 0-3

(2) MINORITY AND WOMEN-OWNED BUSINESSES PARTICIPATION

You are required to follow state and federal policy requirements pertaining to the promotion of Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) as set forth in CSD Policy Statement #90-03.

Congratulations on receiving this CDBG grant to carry out this community development program to improve the quality of life in the City of Vicksburg. If you have questions, please contact Jim Catt at (601) 359-3179.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Mozee, Jr.", with a stylized flourish at the end.

Sam Mozee, Jr.
Director
Community Services Division

SM:jnt

Enclosures

**Community Development Block Grant Program
Budget**

Exhibit O-4

Applicant: City of Vicksburg

Funding Year: 2001 Grant Year : 1118 CDBG 2001 Contract: 01-374-ED-IF01

Description	MDA	IDIS	Other Funding Sources				
Administration			CDBG	City (RAIL)	Hancor, Inc.		Total
General Administration			\$31,500.00				\$31,500.00
Application Prep			\$3,500.00				\$3,500.00
Audit							\$0.00
Subtotal (A)			\$35,000.00	\$0.00	\$0.00	\$0.00	\$35,000.00

Description	MDA	IDIS	Other Funding Sources				
Econ. Dev			CDBG	City (RAIL)	Hancor, Inc.		Total
Architectural/Engineering			\$124,170.00				\$124,170.00
Contingency				\$46,380.00			\$46,380.00
Easement / Right-of-way Acquisition			\$7,000.00				\$7,000.00
Rail			\$483,830.00	\$220,926.00			\$704,756.00
Equipment, Labor, and Consulting					\$500,000.00		\$500,000.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
Subtotal (B)			\$615,000.00	\$267,306.00	\$500,000.00	\$0.00	\$1,382,306.00
Grand Total (A + B)			\$650,000.00	\$267,306.00	\$500,000.00	\$0.00	\$1,417,306.00