

**UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD**

301392

—
FINANCE DOCKET NO. 36261
—

ENTERED
Office of Proceedings
December 28, 2020
Part of
Public Record

**BALLARD TERMINAL RAILROAD COMPANY, L.L.C. –
PETITION FOR DECLARATORY ORDER**
—

**JOINT STATUS REPORT OF THE CITY OF SEATTLE, WASHINGTON AND
BALLARD TERMINAL RAILROAD COMPANY, L.L.C. IN RESPONSE TO
DECISION SERVED HEREIN ON JUNE 27, 2019**

Patrick Downs
Assistant City Attorney
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, Washington 98104-7097
(206) 684-8200
patrick.downs@seattle.gov

Michael F. McBride
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Suite 700
Washington, DC 20007-3877
(202) 298-1800
mfm@vnf.com

Tadas A. Kisieliuss
Dale Johnson
Van Ness Feldman, LLP
719 Second Avenue, Suite 1150
Seattle, WA 98104
(206) 623-9372
tak@vnf.com
dnj@vnf.com

Attorneys for the City of Seattle, Washington

Joshua C. Allen Brower
Brower Law PS
1111 Third Avenue, Ste 3000
Seattle, WA 98101-3292
(206) 498-1804
josh@browerlawps.com

Patrick J. Schneider
Foster Garvey PC
1111 Third Avenue, Ste 3000
Seattle, WA 98101-3292
(206) 447-4400
pat.schneider@foster.com

Attorneys for Ballard Terminal Railroad Company, L.L.C.

December 24, 2020

**THIRD JOINT STATUS REPORT IN RESPONSE TO DECISION
SERVED HEREIN ON JUNE 27, 2019**

Pursuant to ordering paragraph no. 2 of the Board's Decision served herein on June 27, 2019, the City of Seattle, Washington ("Seattle") and Ballard Terminal Railroad Company, L.L.C. ("Ballard Terminal") provide this status report of the litigation in the Superior Court of King County, Washington ("Superior Court litigation")¹ between Seattle and Ballard Terminal.¹

As explained in previous Joint Status Reports filed herein in December 2019 and June 2020, the Court ruled on the merits on a number of motions for summary judgment filed by the parties. As a result of those rulings, the Superior Court has now resolved all of the City's state-law contract claims/causes of action against Ballard Terminal, which the City asserts were the basis for the Board's decision to hold Ballard Terminal's Petition in abeyance.²

The only remaining unresolved claim is Ballard Terminal's claim against the City for damages and attorney's fees arising under a number of theories based on state and federal law causes of action and entirely unrelated to the issues raised in Ballard Terminal's Petition and beyond the Board's jurisdiction. Seattle and Ballard Terminal both filed motions for summary judgment on those claims on December 18, 2020 with hearing set for January 15, 2021. Ballard Terminal's claims against the City for damages and attorneys' fees can be resolved independently of the Board's jurisdiction and processes.

As previously communicated to the Board in June, 2020, the King County Superior Court's Order issued on June 25, 2020, resolved whether the City could force Ballard Terminal to remove and relocate its tracks to accommodate the City's recreational trail, the so-called "Missing Link" of the Burke-Gilman Trail. The Court held that the City cannot do so, relying on its view of the Board's authority under 49 U.S.C. 10901.³

In light of the Court's order issued June 25, 2020, Ballard Terminal now asserts that there is no relief that the Board can provide to Ballard Terminal that the Court has not already provided, and that the Board can therefore dismiss its Petition without prejudice.

¹ King County Superior Court Docket No. 19-2-01794-5 SEA.

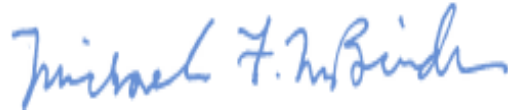
² <https://dcms-external.s3.amazonaws.com/MPD/62491/EFB8285C8EEE4B8185258425006D2660/46990.pdf>

³ June 25, 2020 Order, Pages 5:21-23, 16:1-3 and 22-23, and 7:1-2.

In contrast, it is Seattle's position that because it continues considering its options, including, but not limited to, an appeal of the Superior Court's decision(s) once final judgment is entered by the King County Superior Court, that the Board should continue holding Ballard Terminal's Petition in abeyance pending final resolution of Ballard Terminal's remaining claim currently set for summary judgment on January 15, 2021 and the outcome of any appeal(s) of the Superior Court's order(s), which could take a year or more to complete.

If the Board does not dismiss Ballard Terminal's Petition without prejudice and continues holding it in abeyance, counsel for the Parties will advise the Board of the posture of the state court proceedings during the next status report and will continue to apprise the Board of any additional decisions on the merits that occur prior to the status report.

Respectfully submitted,



Patrick Downs
Assistant City Attorney
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, Washington 98104-7097
(206) 684-82000
patrick.downs@seattle.gov

Michael F. McBride
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Suite 700
Washington, DC 20007-3877
(202) 298-1800
mfm@vnf.com

Tadas A. Kisielius
Dale Johnson
Van Ness Feldman, LLP
719 Second Avenue, Suite 1150
Seattle, WA 98104
(206) 623-9372
tak@vnf.com
dnj@vnf.com

Attorneys for the City of Seattle, Washington

Joshua C. Allen Brower
Brower Law PS
1111 Third Avenue, Ste 3000
Seattle, WA 98101-3292
(206) 498-1804
josh@browerlawps.com

Patrick J. Schneider
Foster Garvey PC
1111 Third Avenue, Ste 3000
Seattle, WA 98101-3292
(206) 447-4400
pat.schneider@foster.com

Attorneys for Ballard Terminal Railroad Company, L.L.C.