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**SHAREHOLDERS:**  
 ADDISON (JES) G. WILSON  
 J. JAMES MOORE  
 J. MARK TAYLOR  
 DAVID L. THOMAS  
 ROBERT S. STEVENS  
 WILLIAM C. CLARK  
 KENNETH W. BREWER  
 C. VANCE STRICKLIN, JR.  
 J. EDWARD BRADLEY  
 SHEILA McNAIR ROBINSON  
 HEATH P. TAYLOR  
 MICHAEL E. BASTERDAY

OF COUNSEL AND FOUNDER  
 STANLEY E. KIRKLAND



1700 SUNSET BOULEVARD (SUITE 378)  
 POST OFFICE BOX 3709  
 WEST COLUMBIA, SOUTH CAROLINA 29171  
 TELEPHONE (803) 796-9100  
 FAX (803) 791-9410  
 E-MAIL: [Grsbylaw@grsbylaw.com](mailto:Grsbylaw@grsbylaw.com)

May 17, 2001

**GREENVILLE OFFICE:**  
 25 WADE HAMPTON BOULEVARD  
 GREENVILLE, SC 29609  
 TELEPHONE (864) 271-6371  
 FAX (864) 271-1707  
 E-MAIL: [dlaw@grsbylaw.com](mailto:dlaw@grsbylaw.com)

**HILTON HEAD OFFICE:**  
 60 AAROW ROAD  
 POST OFFICE BOX 7788  
 HILTON HEAD ISLAND, SC 29928  
 TELEPHONE (843) 842-3500  
 FAX (843) 843-3291

**VIA CERTIFIED MAIL**

No. 42087

**SURFACE TRANSPORTATION BOARD**  
 1925 K. St., NW  
 Washington, DC 20423-0001

**RE: Groome & Associates, Inc. and Lee K. Groome vs Greenville County Economic Development Corporation**

Gentlemen:

You will please find enclosed a Formal Complaint which we are hereby filing with your organization. My client, Groome & Associates, Inc. and Lee K. Groome, believe they have been wronged by the Greenville County Economic Development Corporation

It is our understanding that a Formal Complaint is necessary before your Board in order to preserve my clients' rights. Thus, we are filing this document in this form. If any changes or additions are necessary in order to comply with your procedures, we would greatly appreciate being informed of whatever else is necessary in order to protect our petition.

It is our understanding that the Greenville County Economic Development Corporation can be served at Post Office Box 2207, Greenville, South Carolina, 29602. Please advise as to whether or not you will effect service of our Complaint with your Board or as to whether you desire for us to effect service.

**ENTERED**  
 Office of Proceedings  
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 Part of  
 Public Record

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 OFFICE

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 BOARD

\*Fellow of the American Academy of Matrimonial Lawyers  
 †Admitted to practice in New York

**FILING FEE WAIVED**

May 17, 2001

SURFACE TRANSPORTATION BOARD

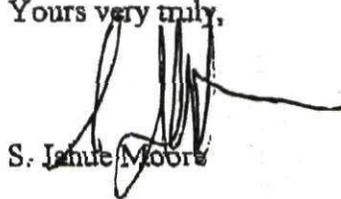
RE: Groome & Associates, Inc. and Lee K. Groome vs. Greenville County Economic  
Development Corporation

Page 2 of 2

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I would appreciate very much an opportunity to discuss this situation with someone from the Board. Please have someone from the Board contact me at your convenience so we might discuss how we procedure from this point.

Yours very truly,



S. Janice Moore

SJM:dc

Enclosure

cc w/encl.:

Linda Morgan, Surface Transportation Board  
Mel Clemens, Director of Compliance and Enforcement  
Mr. Lee K. Groome, Groome & Associates, Inc.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
OF THE UNITED STATES

Groome & Associates, Inc., and  
Les K. Groome, )

Complainants, )

vs. )

Greenville County Economic  
Development Corporation, )

Respondent. )

**FORMAL COMPLAINT**

ENTERED  
Office of Proceedings

AUG 23 2004

Part of  
Public Record

Complainants above-named alleges that.

- 1 Complainants own property located near Greenville, South Carolina, between mile post 2.1 and mile post 11.8 at Travelers Rest, South Carolina.
- 2 In or about June of 1999, the Respondent, Greenville County Economic Development Corporation, acquired the rail line adjacent to the Complainants' property.
- 3 At no time has the Respondent ever sought to properly abandon the rail line and the Complainants have regularly requested rail service.
- 4 Complainants are informed and believe that the Respondent is obligated to provide rail service to the Complainants' place of business.
- 5 Complainants hereby formally file Complaint with the Surface Transportation Board alleging a violation of their rights to rail service

**FILING FEE WAIVED**

6. Complainants have sustained significant loss of income; over charges for freight; loss of profit; and loss of various other funds related to the Respondent's failure to provide appropriate rail service.

7. Complainants are informed and believe that the Surface Transportation Board should look into the matter; should declare the activities of the Respondent to be illegal; should grant such damages as are appropriate in accord with the statute or regulations governing this matter; and should grant attorney's fees and costs as well as an Order requiring the Respondent to provide service.

WHEREFORE, Complainants pray that this Board inquire into the matter; grant the Complainants actual damages; treble damages; punitive damages; injunctive relief; declaratory relief; attorney's fees and costs; and for such other and further relief as this Board might deem just and proper.

WILSON MOORE, TAYLOR & THOMAS, P.A.

BY: \_\_\_\_\_

S. Jahn Moore  
Attorney for Complainants  
P. O. Box 5709  
West Columbia, SC 29171  
(803) 796-9160

West Columbia, South Carolina  
May 17, 2001



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2001-CP-23-2351

Groome & Associates, Inc. and Lee K. Groome, )

Plaintiff, )

- vs. - )

Greenville County Economic Development Corporation )

Defendants. )

**ORDER AND JUDGMENT**

FILED IN THE COURT OF COMMON PLEAS  
GREENVILLE COUNTY, S.C.  
2004 SEP 21 A 04 11 1

The above captioned case was tried by this court non-jury on March 22 and 24, 2004. For the reasons set forth below, the Court finds in favor of Defendant.

Plaintiff Groome & Associates, Inc. ("Groome") is a Georgia corporation which since the early 1990's has operated a paper converting business in Greenville County. Plaintiff Lee K. Groome ("Mr. Groome"), a resident of Greenville County, is the president and principal shareholder of Groome. He also is the owner and lessor of the facility in which Groome operated its business.

Defendant Greenville County Economic Development Corporation ("GCEDC") is a non-profit South Carolina Corporation whose by-laws require that the majority of its board be members of Greenville County Council and that the board chairman be the person who is the chairman of Greenville County Council. GCEDC owns the railroad line which is the subject of this litigation.

### Procedural Background

1. Plaintiffs filed their Summons and Complaint on April 17, 2001, in the Greenville County Circuit Court.
2. Plaintiffs, in April, 2001, attempted to serve Defendant, GCEDC by mail. However, the service was mailed to an address which was neither Defendant's place of business nor its registered corporate address.
3. Plaintiffs, on July 11, 2001, filed an Affidavit of Default with the Greenville County Clerk, and on August 17, 2001, the Court of Common Pleas of Greenville County entered a default judgment, with damages to be determined.
4. GCEDC moved to vacate the default judgment, which motion was granted by the court's order entered April 24, 2002.
5. Plaintiffs eventually served GCEDC on June 24, 2002, by actually delivering a copy of the Summons and Complaint. Plaintiffs filed their affidavit of service July 1, 2002.
6. Not knowing of the filing of the affidavit of service, this court on July 2, 2002, administratively dismissed this case based upon non-service of the Summons and Complaint. On September 24, 2002, this court entered its order restoring the case to the active roster of cases.
7. GCEDC, on October 22, 2002, filed a motion to dismiss Plaintiffs' action on the following grounds: (a) all Plaintiffs' claims were federally pre-empted under the Interstate Commerce Commission Termination Act ("ICCTA") and, therefore, this court lacked subject matter jurisdiction of the claims, and (b) Plaintiffs' claims were barred by the applicable statute of limitations.
8. Judge Edward Miller denied GCEDC's motion to dismiss in his order entered June 24, 2003 (the "2003 Order") and therein made the following legal rulings: (a) Plaintiffs' claims,



although they related to railroad services and operations, were not pre-empted by the ICCTA, and the court of common pleas had subject matter jurisdiction of those claims<sup>1</sup>, and (b) the statute of limitations applicable to Plaintiffs' claims was 28 U.S.C. §1658, which provides for a four year limitation period.

9. GCEDC, on August 7, 2003, filed its Answer which, among other things, raised the above defenses of subject matter jurisdiction and the passing of the statute of limitations.

10. Plaintiffs, in December, 2003, filed a motion for summary judgment. Judge Miller in his order entered February 13, 2004, denied Plaintiffs' summary judgment motion based on disputed facts involving GCEDC's alleged embargo of rail service during the time period after it purchased the subject railroad line.

#### **Findings of Fact**

Based on the preponderance of the evidence, this court makes the following findings of fact.

The Groome facility adjoins a railroad line which extends from the City of Greenville north to Travelers Rest, South Carolina (the "Line"). Until April 29, 1997, the Line was operated by Greenville & Northern Railroad ("G&N"). At that time, South Carolina Central Railroad, Inc., dba Railtex ("Railtex") purchased the Line. For the year 1996, there were 8 shippers, including Groome that used the Line for rail services. Total rail shipments on the Line were 1,089 cars, with Groome accounting for 249 cars, and total revenues generated by the Line that year were \$426,433, with Groome accounting for \$56,309.

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<sup>1</sup> Although Defendant has presented legal authorities which hold that this court has no subject matter jurisdiction of Plaintiffs' claims, this court believes it is compelled to abide by the jurisdictional decision made in the 2003 Order and, therefore, will not revisit that legal issue.



In November, 1997, Plaintiffs learned from a conversation with a rail engineer that Railtex was going to embargo the Line due to deterioration of the track and several trestles. Mr. Groome on December 10, 1997, wrote other shippers on the Line to alert them to the embargo. In that letter, he cast doubt on the legitimacy of Railtex's impending embargo and requested assistance from the recipients to keep the Line opened. Thereafter Railtex, without formal notice to Plaintiffs, implemented its embargo. Plaintiffs' last rail service on the Line was February 8, 1998. Plaintiffs have had no rail service on the Line since that time.

During 1998 and the first half of 1999, Mr. Groome discussed with the Surface Transportation Board ("STB") the Railtex embargo and his rights and remedies as a rail shipper. He also had discussions with Railtex representatives regarding various plans to restore rail service on the Line. By letter dated February 25, 1998, Railtex offered to restore service through 2000 if Groome and two other shippers would contribute \$100,000 each to restore the trestles, with Railtex then to spend \$200,000 of its own money to make additional rail repairs and to make further capital expenditures of an undetermined nature in 1999 and 2000 as needed. Groome rejected that offer.

Railtex expressed its interest in its letter dated January 29, 1999, in selling the Line to Groome and the other shippers for \$750,000. Groome also rejected that offer. Railtex then filed a notice with the STB stating that it intended to abandon the Line within the next three years. If such abandonment were to occur, it is probable that rail service on the Line would permanently and irrevocably end.

The High Speed Rail Committee of the Greenville Chamber of Commerce, then chaired by Pat Haskell-Robinson, learned of Railtex's intent to abandon the Line and approached Greenville County Council about purchasing the Line in order to preserve it for future rail use. County Council authorized Gerald Seals, the County Administrator, to negotiate with Railtex to purchase

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the Line. Mr. Seals presented to County Council a proposal to purchase the Line, as well as a separate southern rail line owned by Railtex, for an aggregate price of \$1,300,000. County Council approved the purchase and determined that the Line should actually be owned by GCEDC. On June 14, 1999, GCEDC took title to the Line. As reflected in STB documents filed by GCEDC in connection with its acquisition of the Line, GCEDC itself was not a railroad operator and intended to seek a third party to operate the Line.

At the time of purchase on June 14, 1999, the Line was in a serious state of disrepair. Six of the original eight shippers on the Line had either closed or moved away, leaving Groome and Papercutters as the only potential users of the Line. GCEDC's board members had numerous discussions regarding the poor condition of the Line and the costs of repairs necessary to restore rail service. GCEDC did not have the funds sufficient to make the needed repairs, nor would the potential rail revenues from Groome and Papercutters be economically sufficient to warrant the expenditures of such funds. GCEDC could, therefore, neither operate the Line nor make repairs to it sufficient to restore rail service.

After the GCEDC's purchase of the Line, Mr. Groome on one or more occasions had discussions with Ms. Haskell-Robinson and Mr. Seals and perhaps others regarding his desire to restore service on the Line. Although the parties dispute the substance of those discussions, this court finds that no persons connected with GCEDC or Greenville County promised Plaintiffs that rail service would be restored on the Line and that, at most, the discussions concerned ways to find state, federal or local funds which, if obtained, could be used to repair the Line and restore rail service. GCEDC made substantial efforts to find public funding to repair the Line and to find an operator for the Line. Great Walton Railroad Co., Inc., a rail operator which Mr. Groome introduced to GCEDC, evaluated the Line in August, 2000, and opined that approximately

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\$900,000 would be needed to repair the Line to Papercutters and that an additional \$596,000 would be needed to restore the Line above Papercutters. According to GCEDC's own estimates, the cost of fully restoring the Line, and including all street signal upgrades, would be \$8,000,000. Although GCEDC was unsuccessful in obtaining the significant funds necessary to repair the Line, it was able to obtain government grants for such things as title examinations and a \$100,000 purchase cost reimbursement, which GCEDC had to repay Greenville County.

In connection with these discussions, the court notes that Mr. Groome was an experienced and successful businessman who well prior to June, 1999, had consulted the STB about his rights and remedies as a rail shipper and who was aware that rail service could not be restored on the Line unless substantial capital expenditures were undertaken for repairs.

Plaintiffs in this action contend that the loss of rail service caused Groome to go out of business and for Mr. Groome to suffer a diminution in his salary and profit sharing payments. Groome also contended that that the lack of rail service increased its storage, handling and shipping costs from GCEDC's purchase until Groome ceased operations by \$285,243 during the period subsequent to June, 1999. However, during the period 1996 to 2002, Groome's annual sales ranged from \$5,000,000 to \$10,000,000 and were subject to substantial fluctuations caused by conditions in the paper market. In fact, Groome's sales already had entered a downward trend even before rail service ceased in February, 1998. Additionally, after June, 1999, Groome suffered other major business reversals, including (a) purchasing an over supply of above-market cost inventory, (b) writing off substantial accounts receivable which were uncollectible, (c) losing favorable sales terms from Continental Paper, its major supplier of inventory for Groome and (d) a general decline in the paper business in concert with the national economic recession in 2000 and afterwards. Therefore, this court finds that a lack of rail service did not put Groome out of business, but rather

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it increased his operational costs by an aggregate amount of \$285,243 during the time that GCEDC has owned the Line.

### Conclusions of Law

#### Federal Preemption and Primary Jurisdiction

Defendant has brought to this Court's attention legal authorities which arguably hold either that railroad embargo issues are federally preempted (with state courts having no subject matter jurisdiction of that issue) or, alternatively, that railroad embargo issues are matters which, under the doctrine of "primary jurisdiction," should be referred to the STB for decision, with the court abstaining from the issue except as necessary to carry out the order of the STB. As noted above, the issue of federal preemption was heard and decided in the 2003 Order wherein Judge Miller ruled that federal preemption did not apply to this case and that this Court has subject matter jurisdiction of Plaintiffs' claims. This Court believes that the 2003 Order is binding on the parties at this stage of the proceedings, and therefore this Court will not disturb the prior order of the court in regard to the federal preemption issue.

Unlike federal preemption, the issue of primary jurisdiction has not been addressed by a prior order in this case. It is clear under the ICCTA that the STB has jurisdiction to hear and decide Plaintiffs' claims in this action, and therefore this Court finds that it shares jurisdiction with the STB in this case. Where adjudicating forums share concurrent jurisdiction of a matter, Courts often have applied the doctrine of primary jurisdiction. That doctrine holds that the forum having the lesser expertise and experience in the matter voluntarily should permit the action to be decided by the forum having the greater expertise and experience in the matter. Pejepscot Industrial Park, Inc. v. Central Railroad Co., 215 F.3d 195 (1<sup>st</sup> Cir. 2000).



This Court does not believe that the doctrine of primary jurisdiction is applicable to this case. After hearing the evidence at trial, it is apparent that the central issues in this case concern Defendant's right to embargo the Line, the reasonableness of the embargo, and the nature and extent of Plaintiffs' damages. This Court believes that it is at least as qualified as the STB to determine all of those issues and that there are no legal or factual issues here which could be better determined by the STB. The factors supporting implementation of the doctrine of primary jurisdiction do not exist in this case.

#### Statute of Limitations

As noted above, the 2003 Order makes a legal finding that the applicable statute of limitations in this action is the four-year period established by 28 U.S.C. §1658. Accordingly, this court believes it is bound by that ruling, and therefore it makes no independent examination of this legal issue. Consequently, the factual questions to be answered are: (1) when did the statute begin to run, and (2) did Plaintiffs commence this lawsuit within the applicable four-year period.

With respect to the first question, this court finds that Plaintiffs knew Railtex was implementing an embargo as early as November, 1997, and that only shipments in route would be delivered. No new shipments would be honored. Mr. Groome's December 10, 1997, letter evidences both his great concern about the impending cessation of rail service and his doubts about the justifiability of such cessation. Finally, Groome knew railroad service ceased operations on February 8, 1998, when their last load of goods were received and unloaded. Therefore, the statute of limitations began to run on that date.<sup>2</sup> Applying the four-year statute of limitations as this court

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<sup>2</sup> Although the Line, after February, 1998, was subject to embargos by Railtex and GCEDC, there is no legal authority justifying a suspension of the statute of limitations due to the embargo. As shown by legal authorities below, a shipper has legal recourse to immediately challenge an embargo and to receive damages if the embargo is unreasonable.

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is bound to do, all actions commenced after February 8, 2002, are barred. Consequently, the next question to decide is whether Plaintiffs commenced their action within four years.

Rule 3, SCRCP (as it existed in 2001 when this action was filed), states in its relevant part:

(a) A civil action is commenced by the filing *and* service of a summons and complaint.

(b) For the purpose of tolling any statute of limitations, an attempt to commence an action is equivalent to the commencement thereof when the summons and complaint are filed with the clerk of court *and delivered for service to the sheriff of the county in which defendant usually or last resided...*; provided that actual service must be accomplished within a reasonable time thereafter.

*(emphasis added)*

Although Plaintiffs filed their action on April 17, 2001, they did not serve their pleadings, and thus the action did not commence, until June 23, 2002. McLain v. Ingram, 314 S.C. 359, 444 S.E.2d 512 (S.C. 1992); Blyth v. Marcus, 322 S.C. 150, 470 S.E.2d 389 (S.C. App. 1996). Because the four-year statute of limitations expired February 8, 2002, the Plaintiffs' action was commenced more than four months *after* the limitation period had expired.<sup>3</sup> The statute of limitations for damage claims under the Interstate Commerce Act (as now amended by the ICCTA) is not merely a procedural matter. The passing of the limitation date destroys the cause of action and all of the claimant's rights thereunder, and the statute of limitation must be strictly construed. Atlantic Coast Line Railroad Company v. United States, 213 F. Supp. 199 (M.D. Fla. 1963). Consequently, this court finds that the statute of limitations arising under 28 U.S.C. §1658 had expired prior to

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<sup>3</sup> There is no evidence in the record and, indeed, Plaintiffs have never contended that the summons and complaint ever were delivered to the Greenville County Sheriff. The process server who signed the affidavit of service was not a deputy or other officer of the sheriff's department.

Plaintiffs' commencement of their action and, therefore, Plaintiffs' claims are barred and must be dismissed.<sup>4</sup>

### Promissory Estoppel

In an effort to avoid the imposition of the 28 U.S.C. §1658, Plaintiff claims that GCEDC should be estopped from asserting the statute of limitations.<sup>5</sup> The elements essential for proving promissory estoppel are (1) the presence of a promise unambiguous on its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and, (4) the party to whom the promise is made must sustain injury in reliance on the promise. Prescott v. Farmers Telephone Cooperative, Inc., 328 S.C. 379, 491 S.E.2d 698 (S.C. App. 1997). Plaintiffs cannot meet this burden.

In the first instance, Plaintiff cannot show GCEDC made a promise unambiguous on its terms. Even assuming that GCEDC through Mr. Seals made a statement to the effect that "we've got \$500,000 and we're going to fix the line" as Mr. Groome asserts, such statement is not sufficient to meet the requirements of promissory estoppel. Mr. Groome's claim that he would rely on such a statement is simply not credible and consistent with other the evidence. At a minimum, there is no timing as to when the promise will be acted upon or when repairs will be completed. As to elements 2 and 3 above, there is no basis for Plaintiffs to argue that they relied on statements by Mr. Seals. In 1998 *before* GCEDC bought the Line, Mr. Groome realized that he had lost rail service and, admittedly, put his building on the market because of the loss of rail service. Having lost his rail service for more than 16 months before ever discussing GCEDC's plans for the rail

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<sup>4</sup> Plaintiffs also assert claims under §§58-17-310, 58-17-3950 and 58-17-3980 Code of Laws of South Carolina, 1976. However those statutes are subject to limitations of either one or two years and thus also would have expired by the time Plaintiffs commenced this action.

<sup>5</sup> At the conclusion of GCEDC's case, Plaintiffs moved to amend their Complaint to conform with the evidence and to allege a cause of action against GCEDC for promissory estoppel. Technically, this cause of action is a matter in reply

line, Groome's claim that he relied on Seals statement is not credible. Mr. Groome is an experienced businessman. He started Groome and built it into a 10 million dollar business by the early 1990's. He had undertaken to place his business next to a rail line precisely to utilize those services. When shipments ceased, he had a duty to take actions in an effort to keep the line open. Plaintiff chose instead to operate without rail service for an extended period of time both before and after GCEDC's purchase. He knew Greenville County Council had to approve purchase of the Line. Indeed, he had discussions with County officials before GCEDC's actual purchase. One does not allow a 5 to 10 million dollar business to undergo that kind of fundamental change in the way it receives its resources and delivers its products by relying on an unsupported statement by the County Administrator knowing that a governmental entity cannot spend half a million dollars without complying with the procurement code and formal action by the Board.

Moreover, there was no evidence Plaintiffs were induced by GCEDC to do some act to their detriment. Dillon County School District No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985). Plaintiffs in their dealings with GCEDC were aware of their rights and remedies.

For the reasons the court finds that any representations of GCEDC or Greenville County officials to Plaintiffs regarding the restoration of rail service did not rise to the level of unambiguous promises to restore rail service. Further, this court finds that Plaintiffs were experienced in business matters, were aware of their rights and remedies and, therefore, Plaintiffs did not act reasonably in relying on any alleged and unproven representations of GCEDC or officials of Greenville County regarding restoration of the Line. Plaintiffs' claim for promissory estoppel is, therefore, denied.

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to Defendant's claim that Plaintiffs claims are barred by the statute of limitations. This court allowed that amendment

### Embargo Issues

Although Plaintiffs' action is barred by the statute of limitations and dismissed on that basis, this court will address all issues raised at trial in the event this matter is appealed.

The thrust of Plaintiffs' case revolves around whether a legal embargo was in place on the Line when GCEDC purchased it. Plaintiffs contend that they are entitled to damages against GCEDC if no legal embargo existed on the Line. Although GCEDC under 49 U.S.C. §11101 is obligated to provide rail service, that statute assumes that the carrier is physically and economically able to provide such rail service. Logically, if a bridge washes out or if the line cannot be operated due to damage, the carrier cannot provide rail service to the shipper. The common law indeed recognizes that the carrier's duty under §11101 is not absolute and that circumstances can exist which excuse a railroad from offering services to a shipper. Interstate Commerce Commission v. Baltimore and Annapolis Railroad Company, 398 F. Supp 454 (D. Md., 1975). As noted by one court:

The statutory common carrier obligation imposes a duty upon railroads to "provide transportation or services on reasonable request." 49 U.S.C. 11101(a). A railroad may not refuse to provide service merely because to do so would be inconvenient or unprofitable. G.S. Roofing Prods. Co. v. Surface Transp. Bd., 143 F.3d 387,391 (8<sup>th</sup> Cir. 1998). The common carrier obligation, however, is not absolute. Id. A valid embargo will relieve a carrier of its obligation to provide service. Id. at 392. An embargo can be imposed by a carrier to temporarily cease or limit service when it is physically unable to serve specific shipper locations. Under its common carrier obligation, the embargoing railroad must restore service within a reasonable time. To be valid, an embargo must be reasonable at all times. G.S. Roofing, 143 F.3d at 392. The board employs a balancing test to determine the reasonableness of an embargo. Under this test, the Board considers: (1) the cost to repair the railroad; (2) the intent of the railroad; (3) the length of the embargo; (4) the amount of traffic on the line, and (5) the financial condition of the carrier. Id.

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over Defendant's objection.

The reasonableness of an embargo involves a fact-specific inquiry and is to be determined on a case-by-case basis.

Decatur County Commissioners v. Surface Transportation Board, 308 F.3d 710 at 715 (7<sup>th</sup> Cir. 2002)

As explained in Interstate Commerce Commission v. Baltimore and Annapolis Railroad Company, an "embargo" of service is established by the carrier itself and justifies cessation of service as temporary emergency measure when for some reason the carrier is unable to perform its duty as a common carrier. In order to avoid violating the carrier's duties, the cessation must continue to be beyond the control of the carrier. Once the physical impossibility of service terminates, the carrier must resume service if it is financially able to do so.

Consistent with these interpretations of the Act, I find that an embargo is simply a situation where a common carrier does not have to provide rail service all of the time and rail service can be interrupted without prior permission of the Surface Transportation Board. A shipper damaged by an unreasonable embargo has recourse to the STB, or to a court with jurisdiction of such claim, and has an affirmative duty to protect its rights in such matters.

As noted in Decatur County, in determining whether an embargo is reasonable, thereby absolving the carrier of damages for not providing rail service, the court must examine and weigh all of the following factors:

1. What is the cost of restoring the rail line, and is it economically justifiable to expend those costs in order to restore the line? In the case at bar, it is undisputed that the costs of restoring the Line are substantial (between \$900,000 to \$8,000,000 depending on which cost estimate is believed), and likewise it is undisputed that the expected revenue to be generated on the Line would not economically justify such a large expenditure.

2. What was the intent of the railroad? That is, did the railroad look for ways to restore service, or did it intentionally refrain from making repairs so that the line would deteriorate? In the case at bar, it is undisputed that the Line was unusable when GCEDC acquired it. Therefore, there can be no contention that GCEDC deferred maintenance in order to intentionally cause the Line to become unusable. It likewise is undisputed that GCEDC has the intent to restore the Line if the necessary funds can be obtained. The factual situation presented in this case is substantially different from the situation existing in most other embargo cases. GCEDC, unlike rail operators in other embargo situations, never owned or operated a railroad, and GCEDC acquired the Line not for economic profit, but rather for purposes of preserving the Line from abandonment and protecting the interests of the public in that rail corridor. Such intent of GCEDC is commendable, it is beneficial to the public policy of this state, and this Court finds that the intent and actions of GCEDC then and thereafter have been reasonable under the particular circumstances of this case.

3. How long was the embargo, and what was the traffic on the Line? In the case at bar, the embargo by Railtex began in 1998, and the embargo by GCEDC then continued thereafter to the present date. This is a long period. However, such fact is not necessarily an indication that the embargo has been unreasonable. The length of the embargo in Decatur County was justified by the fact that the repairs were costly and not economically justifiable. Further, the facts in this case are unique. Plaintiffs did not have rail service for about 1½ years before GCEDC purchased the Line, GCEDC was not a rail operator and purchased the Line in order to preserve it for possible future rail use. At the time of purchase, potential traffic on the Line was minimal even if it were restored. Railtex had notified the STB that it intended to abandon the Line. Had abandonment occurred, it most likely would have resulted in the permanent loss of rail service for Travelers Rest and others in northern Greenville County. Under these circumstances, Greenville County acted responsibly

and in the public interest by causing the Line to be purchased to protect and preserve it for future rail use. Such actions on the part of the county are commendable and good public policy.

4. What is the financial condition of the railroad? It is uncontested that GCEDC has very little cash and no financial ability to make the repairs necessary to restore the Line. The relationship of Greenville County to GCEDC does not change this fact. Plaintiffs have shown no liability or responsibility of Greenville County towards the debts or other obligations of GCEDC.

Plaintiffs not only contend that GCEDC's embargo has been unreasonable, but also they claim that the embargo is invalid because (1) GCEDC never officially notified Plaintiffs of the embargo, (2) GCEDC's board never voted on the embargo or otherwise approved the embargo, and (3) under the rules of the American Association of Railroads ("AAR"), any embargo by the GCEDC must be filed with the AAR in order to be valid and expires after one year.

Regarding (1) and (2), it is undisputed: that Raitex never gave Plaintiffs any official notice of its embargo; that Plaintiffs already knew that there was no service on the Line when GCEDC purchased it; and that GCEDC's Board, while never voting on an official embargo, nevertheless was aware of and often discussed the fact that rail service on the Line was not feasible until and unless substantial repairs were made to the Line. The above cases involving embargos under common law do not turn on whether the shipper had notice of the embargo or whether the railroad officially declared an embargo by passing a resolution or taking some other corporate act that officially labeled the cessation of service as an "embargo." Shippers know when rail service ceases because the trains stop coming. Likewise, GCEDC's stoppage of service on the Line can constitute a common law embargo regardless of whether GCEDC was even aware of the legal principles underlying an embargo. A common law embargo arises due to the circumstances under which rail



service is stopped, and the existence of the embargo does not depend upon notice to the shipper or the railroad's formality in calling those circumstances an "embargo."

With regard to the AAR, it is uncontested that GCEDC has never been a member of the AAR. Plaintiffs have shown no statute, regulation or other legal authority which makes the regulations of the AAR applicable to railroads that are not members of the AAR. Therefore, this court rules that any regulations of the AAR concerning embargos are not binding on GCEDC and do not control the legal issue of whether GCEDC's embargo was valid. Further, inasmuch as an AAR embargo filing serves to notify the rail industry that a rail line no longer is in service, such purpose would not have been served by GCEDC's filing with the AAR because service on the Line was "one way" to only a few shippers and, in any event, had been stopped long before GCEDC became owner of the Line.

Based on the above legal authorities, this court rules that Plaintiffs have not proved that GCEDC's embargo was unreasonable. To the contrary, this court rules that GCEDC's embargo has been reasonable under the particular facts of this case. Therefore, GCEDC's stoppage of rail service on the Line constituted a reasonable and valid embargo of the Line, and GCEDC is not liable to Plaintiffs for any damages for failure to provide rail services.

#### Damages

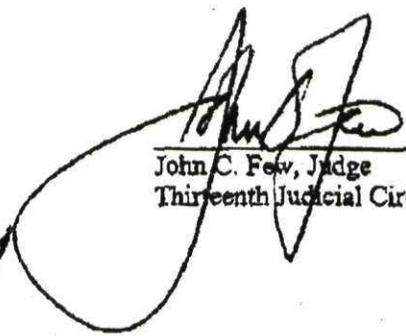
Although this court has ruled that Plaintiffs' statutory claims are barred by the statute of limitations and, further, are not actionable due to the valid embargo established by GCEDC, nevertheless, it will rule on the issue of Plaintiffs' damages in this case. As noted above, both Mr. Groome's individual damages as well as Groome's corporate damages arise under their claim that lack of rail service caused Groome to go out of business, a claim which this court has rejected and found implausible in light of Groome's many other financial problems. However, Groome has

shown credible damages of \$285,243 for its increased storage, handling and shipping costs directly resulting from its lack of rail service and incurred during the period subsequent to June, 1999. Therefore, this court rules that even if GCEDC were liable to Plaintiffs for damages in this action, (1) Mr. Grooms has no damages recoverable against GCEDC; and (2) Grooms Enterprises, Inc.'s actual damages are \$285,243, and the facts and circumstances of this case do not warrant imposing additional or other damages (including punitive damages) against GCEDC.

**Conclusion**

For the reasons stated above, Plaintiffs' Complaint is dismissed with prejudice

IT IS SO ORDERED.



John C. Few, Judge  
Thirteenth Judicial Circuit

Date:

September 17, 2009