

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA**

BOROUGH OF NESQUEHONING,

NO. C-2011-2239223

vs.

**READING BLUE MOUNTAIN &
NORTHERN RAILROAD, PENNDOT
AND CARBON COUNTY COMMISSIONERS**

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**C&S RAILROAD'S PRELIMINARY OBJECTIONS TO PLAINTIFF'S PETITION
FOR LEAVE TO AMEND THE COMPLAINT AND ADD C&S RAILROAD AS A
NECESSARY PARTY**

NOW COMES, C&S Railroad by and through its counsel Paul R. Ober & Associates and states the following Preliminary Objections to Plaintiff's Petition to Amend the Complaint to Add a Necessary Party; and in furtherance thereof, states the following Preliminary Objections:

1. Plaintiff, the Borough of Nesquehoning served its Petition upon Reading Blue Mountain & Northern Railroad as well as counsel for PA Department of Transportation and the Carbon County Commissioners on or about December 1, 2011.
2. The Petition seeks to amend the Borough's Complaint to add an additional defendant, C&S Railroad.
3. Plaintiff has not served C&S Railroad.

I. MOTION TO DISMISS FOR LACK OF JURISDICTION

4. Paragraphs one (1) through three (3) are incorporated herein by reference as though set forth in full.
5. Inasmuch as C&S Railroad is that party which Plaintiff seeks to add to this action but

nonetheless has failed to serve C&S Railroad, there is no personal jurisdiction over C&S Railroad and C&S Railroad reserves its right to object to the exercise of jurisdiction over it, notwithstanding the filing of these Preliminary Objections.

WHEREFORE, C&S Railroad respectfully requests that the Plaintiff's Petition to Amend its Complaint before the Pennsylvania Public Utility Commission be dismissed for lack of jurisdiction over C&S Railroad, the party it seeks to add.

II. MOTION TO STRIKE FOR THE INCLUSION OF SCANDALOUS AND IMPERTINENT MATTER

6. Paragraphs one (1) through five (5) are incorporated herein by reference as though set forth in full.
7. Plaintiff, the Borough of Nesquehoning, alleges that Reading Blue Mountain & Northern Railroad is "a principal owner of C&S Railroad owning fifty-one (51%) percent," of C&S Railroad, a statement which is completely false.
8. A controlling interest of greater than fifty (50%) ownership in C&S Railroad would violate federal statutes and administrative rules requiring approval of the Surface Transportation Board governing the operation of C&S Railroad and Reading Blue Mountain & Northern Railroad.
9. The allegation that Reading Blue Mountain & Northern Railroad is "a principal owner of C&S Railroad owning fifty-one (51%) percent" is both scandalous and impertinent.
10. These allegations not only are untrue but impute violations of federal law to C&S Railroad which are immaterial and inappropriate to the Plaintiff's Petition for Leave to Amend its Complaint.

11. These allegations are wholly irrelevant, extraneous, immaterial and must be stricken.

WHEREFORE, C&S Railroad respectfully requests the Pennsylvania Public Utility Commission to enter an Order striking the allegations of paragraph four (4) and denying Plaintiff's Petition to Amend its Complaint.

III. DEMURRER AND MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION UPON WHICH RELIEF CAN BE GRANTED

12. Paragraphs one (1) through eleven (11) are incorporated herein by reference as though set forth in full.

13. Plaintiff Borough filed a Complaint alleging that certain railroad crossings in the Borough of Nesquehoning were in need of repair and/or maintenance.

14. Plaintiff named as a defendant Reading Blue Mountain & Northern Railroad which is neither the owner nor the operator of C&S Railroad and has no responsibility for the maintenance or repair of the crossings in question.

15. Plaintiff has stated no cause of action against C&S Railroad, and has stated no cause of action against the other entities named, Reading Blue Mountain & Northern Railroad, Pennsylvania Department of Transportation or the County Commissioners of Carbon County.

16. Plaintiff's Petition for Leave to Amend fails to provide a basis for any complaint against C&S Railroad.

WHEREFORE, C&S Railroad respectfully requests the Pennsylvania Public Utility Commission enter an Order dismissing Plaintiff's Petition.

IV. MOTION TO STRIKE FOR LACK OF LEGAL SUFFICIENCY


- 17. Paragraphs one (1) through sixteen (16) are incorporated herein by reference as though set forth in full.
- 18. Plaintiff's Complaint before the Pennsylvania Public Utility Commission was made pursuant to an investigation and inspection of rail crossings that previously took place in the Borough of Nesquehoning.
- 19. Plaintiff did not discuss nor consult with C&S Railroad concerning the need to repair or conduct maintenance of the lines, nor has it established the responsibility of C&S Railroad to do so to its prejudice.
- 20. Neither did Pennsylvania Public Utility Commission or the Plaintiff provide C&S Railroad with notice or an opportunity to participate and respond to Plaintiff's concerns with the other named Defendants concerning any repairs to maintenance to the crossings prior to the filing of its Complaint, all to its prejudice.
- 21. Plaintiff seeks to amend its pleading based upon a responsibility to repair which has not been pled or established with respect to C&S Railroad.

WHEREFORE, C&S Railroad respectfully requests this Pennsylvania Public Utility Commission to enter an Order striking the allegations against it and denying the Plaintiff's Petition for Leave to Amend its Complaint.

Date:

December 16, 2011

Respectfully submitted:


Paul R. Ober, Esquire, ID # 17998
Attorney for Defendant, C&S Railroad

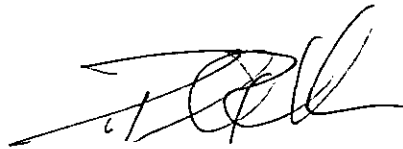
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VERIFICATION

I, Paul R. Ober, Esquire, verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief, based upon the information supplied to me by C&S Railroad.

I am making this verification as attorney for C&S Railroad in that the representative of C&S Railroad is unavailable and his verification cannot be obtained within the time allowed for filing this pleading.

I understand that false statements hereunder are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.



Paul R. Ober, Esquire

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BEFORE PENNSYLVANIA PUBLIC UTILITY
COMMISSION

BOROUGH OF NESQUEHONING :
Complainant :
Vs. :
READING BLUE MOUNTAIN & : Docket No. C-2011-2239223
NORTHERN RAILROAD, :
PENNDOT :
CARBON COUNTY COMMISSIONERS, :
Respondents :

CERTIFICATE OF SERVICE

The document listed below was served on the named party, person or entity as follows:

1. Document - **C&S Railroad's Preliminary Objections to Plaintiff's Petition for Leave to Amend the Complaint to Add a Necessary Party**
2. Party, person or Entity served -

Michael Ozalas, Esquire
P.O. Box 129
Jim Thorpe, PA 18229

Gina D'Alfonso, Esquire
PennDOT
P.O. Box 8212
Harrisburg, PA 17105-8212

Wesley Westenhofer
1 Railroad Blvd.,
P.O. Box 218
Port Clinton, PA 18549

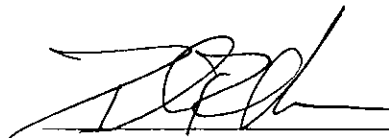
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Robert T. Yurchak, Esquire
1 East Catawissa Street
P.O. Box 127
Nesquehoning, PA 18240

3. Date and/or time of service - **December 16, 2011**

4. Manner of Service - **Regular First Class Mail and/or Electronic Service**

Date: December 16, 2011



Paul R. Ober, Esquire
Attorney for C&S Railroad

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PAUL R. OBER & ASSOCIATES

234 NORTH 6TH STREET

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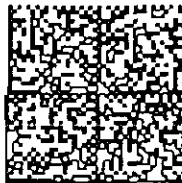
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