

PAUL R. OBER & ASSOCIATES

A PENNSYLVANIA PARTNERSHIP

PAUL R. OBER
TERRY L. PARISH
JAMES L. DAVIS*
CHARLES M. WATKINS
JOSEPH A. LA FLAMME, P.E.**
THOMAS C. ANEWALT
MICHELLE A. RHIZOR*

ATTORNEYS AT LAW
234 N. 6TH STREET
READING, PENNSYLVANIA 19601

aggressive advocacy

(610) 378-0121
FAX (610) 378-9712

JOHN J. MURPHY, JR. (1984)

BOYERTOWN OFFICE:
Boyertown, PA 19512
(610) 367-6991

* ALSO MEMBER CALIFORNIA BAR
* ALSO MEMBER NEW JERSEY & FLORIDA BARS
* LL.M. IN TAXATION
* ALSO MEMBER NEW JERSEY BAR
* LICENSED PROFESSIONAL ENGINEER
IN PENNSYLVANIA, FLORIDA & NEW YORK

paul@oberandassociates.com

November 21, 2012

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Attn: Secretary
P.O. Box 3265
Harrisburg, PA 17105-3565

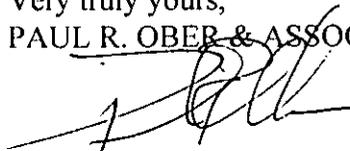
Re: City of Pottsville v. Reading Blue Mountain & Northern Railroad, Schuylkill
County, PennDOT
Docket No. C-2012-2330567

Dear Secretary:

Enclosed please find an Original Preliminary Objections of Defendant Reading Blue Mountain & Northern Railroad for Lack of Jurisdiction, Brief in Support thereof and a Certificate of Service relative to the above-captioned matter. Please file in your usual manner and return any time-stamped copies in the enclosed self-addressed stamped envelope.

Thank you for your anticipated cooperation.

Very truly yours,
PAUL R. OBER & ASSOCIATES



Paul R. Ober, Esquire
(Attorney for Reading Blue Mountain
& Northern Railroad)

PRO/cmc

cc: Alvin B. Marshall, Esquire - Regular First Class Mail
Gina M. D'Alfonso, Esquire Regular First Class Mail
Thomas J. Pellish, Esquire - Regular First Class Mail

SUBURBAN OFFICES
by appointment

HAMBURG, PA 19526 (610) 562-5879
1244 WEST HAMILTON STREET, ALLENTOWN, PA 18102 (610) 437-4455
P.O. BOX 196, SKIPPACK, PA 19474 (484) 576-0233

RECEIVED
2012 NOV 27 AM 10:11
PA.P.U.C.
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED
2012 NOV 27 AM 10:12
PA-P.U.C.
SECRETARY'S BUREAU

CITY OF POTTSVILLE	:	Complaint Docket
Complainant	:	No. C-2012-2330567
	:	
v.	:	
	:	
READING BLUE MOUNTAIN &	:	
NORTHERN RAILROAD,	:	
SCHUYLKILL COUNTY,	:	
PENNDOT	:	
Respondents	:	

**REVISED PRELIMINARY OBJECTIONS OF DEFENDANT READING BLUE MOUNTAIN
& NORTHERN RAILROAD FOR LACK OF JURISDICTION**

NOW COMES the Defendant Reading Blue Mountain & Northern Railroad
by and through its counsel, Paul R. Ober, Esquire and Paul R. Ober & Associates and states the following:

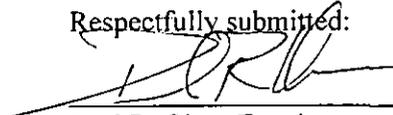
1. The gravamen of the Complainant's Complaint which was filed with the Pennsylvania Public Utility Commission alleges disrepair of a certain handrail along Defendant's property adjacent to a city street.
2. In May 2010, after considerable negotiations between the City of Pottsville and Reading Blue Mountain & Northern Railroad, the railroad agreed to make certain repairs on a wall located on its property.
3. Pursuant to an amendment to that agreement, the City agreed to remove its sidewalk in order to allow the Defendant, Reading Blue Mountain & Northern Railroad to make its repairs.
4. The City also agreed to have the area inspected by a professional engineer who would issue a report to all parties in an effort to determine whether Pottsville Sewer Authority's ("Authority") activities at the site and surrounding areas had caused the problem and to determine how the Authority would be required to perform future work in order to avoid exacerbating that the Railroad's proposed work would rectify the problem.
5. The City further agreed to reinstall the sidewalk and agreed to be responsible for the maintenance

of the handrails which were adjacent to a city street.

6. The inspection by the professional engineer never occurred.
7. The handrails do not assist people in traversing railroad property or any railroad crossing.
8. Notwithstanding the agreement, the Plaintiff has filed the instant Complaint in an effort to compel the Reading Blue Mountain & Northern Railroad to repair said guide rails for a public thoroughfare.
9. The Complaint arises under 66 Pa. C.S. Section 1501 and is due to the alleged disrepair of the guide rail along the Defendant's property adjacent to a city street.
10. The Complaint is not about condition of a railroad crossing nor assisting the public in traversing railroad property.
11. The Pennsylvania Utility Commission is without legal authority to adjudicate this dispute and the Pennsylvania Utility Commission lacks jurisdiction.
12. The Plaintiff has stated a Complaint before the Pennsylvania Utility Commission upon which relief cannot be granted.

WHEREFORE, the Defendant Reading Blue Mountain & Northern Railroad respectfully requests this Commission to enter an Order dismissing the Complaint on the basis of lack of jurisdiction.

Respectfully submitted:



Paul R. Ober, Esquire
Attorney ID No. 17998
234 N. 6th Street
Reading, PA 19601
(Attorney for Reading Blue Mountain
& Northern Railroad)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CITY OF POTTSVILLE	:	Complaint Docket
Complainant	:	No. C-2012-2330567
	:	
v.	:	
	:	
READING BLUE MOUNTAIN &	:	
NORTHERN RAILROAD,	:	
SCHUYLKILL COUNTY,	:	
PENNDOT	:	
Respondents	:	

RECEIVED
2012 NOV 27 AM 10:12
PA.P.U.C. BUREAU
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2012, I have served a true and correct copy of the foregoing Revised Preliminary Objections of Defendant, Reading Blue Mountain & Northern Railroad for Lack of Jurisdiction and Brief in Support thereof upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Alvin B. Marshall, Esquire
Schuylkill County Solicitor
Schuylkill County Courthouse
401 N. Second Street
Pottsville, PA 17901
(By: Regular First Class Mail)

Gina M. D'Alfonso, Esquire
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105
(By: Regular First
Class Mail)

Thomas J. Pellish, Esquire
Solicitor for the City of Pottsville
306 Mahantongo Street, 2nd Floor
Pottsville, PA 17901
(By: Regular First Class Mail)



Paul R. Ober, Esquire

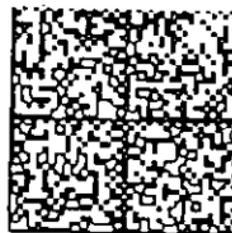
PAUL R. OBER & ASSOCIATES

234 NORTH 6TH STREET
READING, PENNSYLVANIA 19601

PRO/cmc

THIS MAIL HAS BEEN PROCESSED
BY THE POSTAGE DUE SECTION
AT HARRISBURG, PA 17107

45¢



HASLER	017H15536239	US POSTAGE
	<u>\$0.850</u>	
	11/21/2012	
Mailed From 19601		

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Attn: Secretary
P.O. Box 3265
Harrisburg, PA 17105-3565