

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

NORFOLK SOUTHERN RAILWAY COMPANY,

Plaintiff,

v.

Case No. 1:08-CV-618

CITY OF ALEXANDRIA, *et al.*,

Defendants.

**AFFIDAVIT OF WILLIAM THOMAS LANDRUM**

This day personally appeared before me, William Thomas Landrum, who made oath and stated that the following facts are true:

1. My name is William Thomas (Tom) Landrum. I am a National Accounts Manager for Norfolk Southern Corporation. Norfolk Southern Railway Company is Norfolk Southern Corporation's railroad operating subsidiary, and when I refer to "Norfolk Southern" in this affidavit, I am referring to that railroad operating subsidiary.

2. I manage Norfolk Southern's pricing and marketing strategies for ethanol and sweetener commodities. I have been asked to submit this affidavit as a corporate designee in Case No. 1:08cv618 being heard by the U.S. District Court for the Eastern District of Virginia. I have personal knowledge of the information contained herein.

3. I am aware the David Lawson, in his affidavit, explains the fact that Norfolk Southern is the sole party entitled to market the movement of ethanol to, and transloading at, the Facility. In that statement, Mr. Lawson notes that Norfolk Southern is the sole party able to set and receive a fee for the transloading of ethanol at the Facility, if any fee is separately

assessed for that service. That certainly is true, but generally the transloading service is an integral part of the transportation service to the Facility, and so a separate fee generally is not assessed for the ethanol transloading portion of the transportation provided by Norfolk Southern.

4. A customer cannot ship ethanol to the Facility without it being transloaded at the Facility, and ethanol may only be transloaded at the Facility by Norfolk Southern through its contractor. Indeed, rail transportation of ethanol to Norfolk Southern's Van Dorn Street Yard would be useless to the rail transportation customer without the provision of the transloading services, because otherwise there would be no way of getting the ethanol from the railroad to the blending facility destinations. Therefore, compensation for the transloading service is generally bundled into the overall cost of the rail transportation and not separately stated.

5. There were a few cases in which a quote was made that did not include a specific reference to the transloading service. I believe that a few cars moved pursuant to one of those quotes, but after inquiry I have not found that Norfolk Southern assessed a separate charge for the transloading service. In any event, that quote has been updated, and the transloading operation is now explicitly within the bundled transportation charge.

6. Further, there are times that rail transportation services are provided jointly with another rail carrier, and the other rail carrier is responsible for the assessing and collecting of the transportation services. In that case, Norfolk Southern will provide its factor for the movement of the ethanol into, and transloading of ethanol at, the Facility.

7. Norfolk Southern has transportation contracts and public pricing from various gateways and production origins. Shippers communicate with Norfolk Southern to take

advantage of the public pricing documents or to negotiate agreements for the transportation to the transloading facility.

8. As I have explained above, necessarily bundled within those transportation arrangements (regardless of whether it is separately identified in a contract or public pricing document) is any transloading services. Generally, there are no separate fees assessed for the transloading services provided to customers at the Facility. Unless assessed and collected by another rail carrier pursuant to a joint line rate as described above, Norfolk Southern determines, assesses, and collects compensation from shippers for the full rail transportation package.

9. Ethanol traffic at the Yard varies from day to day depending upon interstate rail operations, the number of ethanol rail tank cars in transportation, and customer demands. In recent weeks, traffic has been impacted by financial difficulties facing one customer. But demand is increasing, and Norfolk Southern expects the ethanol traffic at the Yard to increase steadily based on the needs of the northern Virginia mandated market.

And further the affiant sayeth not.

*Wjh Kl*

\_\_\_\_\_  
[Name]

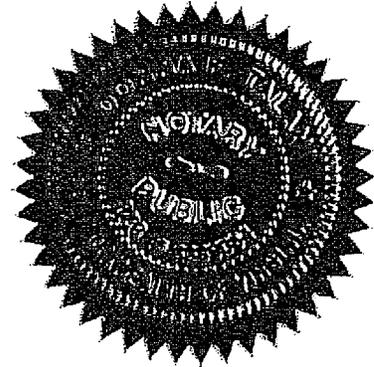
The foregoing Affidavit was acknowledged before me this 21st day of November, 2008, by William Thomas Landrum, an individual known unto me or who has produced sufficient and appropriate identification.

*Donna J. Salani*

\_\_\_\_\_  
Notary Public # 338984

My Commission expires: April 30, 2011

My Registration No.: 338984



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

NORFOLK SOUTHERN RAILWAY COMPANY,

Plaintiff,

v.

Case No. 1:08-CV-618

CITY OF ALEXANDRIA, *et al.*,

Defendants.

**AFFIDAVIT OF DAVID T. LAWSON**

This day personally appeared before me, David T. Lawson, who made oath and stated that the following facts are true:

1. My name is David T. Lawson. I am Vice President of Industrial Products for Norfolk Southern Corporation. Norfolk Southern Railway Company is Norfolk Southern Corporation's railroad operating subsidiary, and when I refer to "Norfolk Southern" in this affidavit, I am referring to that railroad operating subsidiary.

2. I am responsible for the marketing for four of seven of Norfolk Southern's business units. Those business units are: (1) agriculture and consumer products (including ethanol), (2) chemicals, (3) metals and construction, and (4) paper, clay and forest products.

3. I have been asked to submit this affidavit as Norfolk Southern's corporate designee in Case No. 1:08cv618 being heard by the U.S. District Court for the Eastern District of Virginia concerning Norfolk Southern's Van Dorn Yard in Alexandria, Virginia (the "Yard") and Norfolk Southern's ethanol transloading facility located within the Yard (the "Facility"). I have personal knowledge of the materials set forth herein.

4. Norfolk Southern does not have any agreements with RSI or any of its affiliates

that relate to the Facility or the transportation of ethanol to the Facility other than the one it attached as Exhibit 4 to the summary judgment brief.

5. Norfolk Southern is the responsible party for the movement of ethanol into, and the transloading of ethanol at, the Facility, in that Norfolk Southern is the sole party entitled to market the movement of ethanol to, and transloading at, the Facility. Shippers communicate with Norfolk Southern to arrange transportation to, and transloading at, the Facility.

6. Norfolk Southern is the sole party able to set and receive a fee for the transloading of ethanol at the Facility, if any fee is separately assessed for that service. I know that Tom Landrum explains in his affidavit that, even though compensation for the transloading service is generally bundled into the overall cost of the rail transportation and not separately stated, there have been a few cases in which a quote was made that inadvertently did not include a specific reference to the transloading service. Although a few railcars may have moved pursuant to one of these quotes, Norfolk Southern did not separately assess an actual transloading fee for those loads.

7. No other party has the ability to set or assess on a customer a fee for the provision of ethanol transloading services provided at the Facility. No other party invoices for, collects or receives such a fee. No shipper, or any other party other than Norfolk Southern, may utilize – or ever has utilized – the Facility for ethanol transloading operations except as a bundled part of a transportation agreement reached with Norfolk Southern.

8. This all makes sense, given that Norfolk Southern owns the Facility. RSI does not own or lease the Facility. Norfolk Southern constructed the Facility, directly and through the use of other contractors other than RSI and Norfolk Southern bore the cost of construction. Norfolk Southern's use of a contractor for the physical ethanol transloading service – one with the specialized knowledge, expertise and skill that Norfolk Southern does not possess within its

employee pool – is consistent with railroad practice. Many aspects of railroad operations are, and have been, performed by contractors rather than railroad employees. These include construction or operation of facilities that are beyond the capabilities of the railroad, because of the requirement for specialized equipment or personnel, derailment response, and transloading of containers and automobiles at intermodal and automotive facilities.

9. As the owner, Norfolk Southern is ultimately responsible to control, monitor and supervise the operation of the Facility. NSRC inspects and maintains all transportation equipment within the Facility, including the maintenance and repair of tracks, ballasts, cross ties, switches and the like as well as the fixed infrastructure other than that provided by RSI. Although Norfolk Southern operates the Facility through a contractor, it is responsible for the oversight of that contractor. Primarily through Norfolk Southern's Distribution Services Group, which reports to me, Norfolk Southern directs RSI regarding changes required in the Facility and its operations, including services, safety measures, environmental measures, security measures and other operational and facility matters that are to be changed or enhanced.

10. I recall one example of this control, monitoring and supervision over the transloading operations. We often make routine inspections of the Facility. When I was on one of these inspections, I asked about some basic procedures that seemed to be occurring at the Facility where truck drivers coming into the Facility got out of their trucks, but left their keys in the truck's ignition. I made sure that RSI implemented a new procedure requiring all truck drivers remove the keys from the truck's ignition during the transloading process.

11. I know that Kelley Minnehan, one of the owners of RSI, will provide another example of Norfolk Southern's control, monitoring and supervision over the transloading operation – this one concerning the need to clear brush at the Facility. Once Norfolk Southern decided who to contract with to get the work done (and it was not RSI), Norfolk Southern

arranged for the work to be done, and will pay for that work when it is done. This is similar to another example cited by Tony Rosenthal, the RSI facility manager, in his affidavit. When cracks developed in a concrete berm, RSI had to consult with Norfolk Southern on what was to be done, and by what contractor. Because he was on the ground at the Facility, Rosenthal was the natural point person with the contractor chosen to perform the repairs (chosen by Norfolk Southern), but the repairs were paid for by Norfolk Southern pursuant to an agreement between Norfolk Southern and the repair contractor.

12. If enforceable, the restrictions contained in the various Permits issued to Norfolk Southern and RSI would have a ripple effect of congesting not just the Van Dorn Yard, but elsewhere on the Norfolk Southern interstate rail system, affecting not only the delivery of ethanol but other commodities as well. Congestion at one rail yard has the potential for congestion-related effects at other yards as well, congestion-related effects that could ripple through the Norfolk Southern rail system.

13. I understand that each of the Permits that have been issued have been issued for only a limited period of time and are temporary – something along the order of a thirty (30) day period. If the Ordinance were upheld, and the City was able to continue to issue only thirty day permits, that would have a significant adverse effect on both the railroad and shippers who tried to use the railroad for interstate transportation. For the railroad, such a temporary permit is tantamount to an inability to operate, because we just don't know whether the next permit is going to be retroactive, or is going to further restrict the number of trucks permitted, or whether the next permit will be issued at all.

14. The effect of temporary permits would be the same for shippers. These shippers move product from several different origins in different states. Shippers cannot use our

transportation services if they do not know whether we can fulfill their transportation requirements and actually deliver the product where it is sent.

15. Like any of NSRC's rail transportation facilities, the transloading Facility at the Van Dorn Yard represents a significant investment by NSRC based on anticipated volumes of ethanol traffic to be transloaded at the Facility. If the City enforces the restrictions contained in its Permits, this would impact NSRC's revenue stream by driving ethanol traffic away from the Facility. The result would be that the Facility would become economically unfeasible in light of the costs associated with the Facility.

16. If the City of Alexandria can impose on Norfolk Southern the restrictions contained in the Permits, I am concerned that other municipalities like Alexandria might decide to issue similar permits. We would see a cascading effect of haul permits that would have a very negative and detrimental effect on interstate commerce for the movement of ethanol or any other potentially hazardous material.

17. The concern over the effect of such local regulations is real. Recently the District of Columbia enacted a law restricting the routing of hazardous materials through Washington, which regulations were challenged in litigation. While the case was pending, other cities, including Baltimore, Philadelphia and Cleveland followed the case to determine whether they would have the authority to enact similar restrictions. If Alexandria succeeds in imposing restrictions on the railroad, based on my experience I am convinced other jurisdictions would follow.

And further the affiant sayeth not.

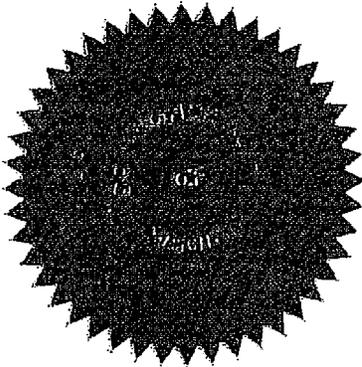
David T. Lawson  
[Name]

The foregoing Affidavit was acknowledged before me this 21 day of November, 2008, by David T. Lawson, an individual known unto me or who has produced sufficient and appropriate identification.

Marilyn J. Flottman  
Notary Public

My Commission expires: January 31, 2010

My Registration No.: 7020 313



THIS DOCUMENT CONTAINS HIGHLY CONFIDENTIAL INFORMATION

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF EASTERN DISTRICT OF VIRGINIA  
3 ALEXANDRIA DIVISION

4 - - - - -x  
5 NORFOLK SOUTHERN RAILWAY :  
6 COMPANY, :  
7 Plaintiff, : Case No. 1:08-CV-618  
8 vs. :  
9 CITY OF ALEXANDRIA, et :  
10 al., :  
11 Defendants. :

12 - - - - -x  
13 CITY OF ALEXANDRIA, :  
14 Counterclaim Plaintiff, :  
15 vs. :  
16 NORFOLK SOUTHERN RAILWAY : Case No. 1:08-CV-618  
17 COMPANY, :  
18 Counterclaim Defendant, :  
19 and :  
20 RSI LEASING, INC., :  
21 Third-Party Defendant. :  
22 - - - - -x

THIS DOCUMENT CONTAINS HIGHLY CONFIDENTIAL INFORMATION

1           Highly confidential 30(b)(6) deposition of DAVID  
2 T. LAWSON called for examination pursuant to notice  
3 of deposition, on Thursday, October 16, 2008, in  
4 Alexandria, Virginia, at the Offices of the  
5 Alexandria City Attorney, City Hall, 301 King  
6 Street, Suite 1300, at 9:17 a.m., before DONALD R.  
7 THACKER, a Notary Public within and for the  
8 Commonwealth of Virginia, when were present on  
9 behalf of the respective parties:

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W. ERIC PILSK, ESQ.  
Kaplan, Kirsch & Rockwell LLP  
1001 Connecticut Avenue, Northwest  
Washington, DC 20036  
202.955.5600    202.955.5616  
Epilsk@kaplankirsch.com  
On behalf of City of Alexandria

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APPEARANCES (Continued)

GARY BRYANT, ESQ.

Wilcox & Savage, P.C.

One Commercial Place

Suite 1800

Norfolk, Virginia 23510

Appearing for Norfolk Southern Railway

JOHN V. EDWARDS, ESQ.

Norfolk Southern Corporation

3 Commercial Place

Norfolk, Virginia 23507

757.629.2817

On behalf of Norfolk Southern Corporation

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1           A     More of what I was speaking to is the fact  
2     that it would begin to cause further congestion in  
3     to our system, our railroad system, into our yards,  
4     which would have two potential negative effects.  
5     One is it would have whatever the federal  
6     implications are in violation of that, but two, it  
7     would have potentially congestion-related effects,  
8     and one of the things we attempt to do is to  
9     continue the notion of continuous movement of our  
10    freight through our yards, and so backing up freight  
11    in yards is something that we make every attempt to  
12    not do, to keep cars constantly moving, because of  
13    the notion of the fluidity is something that is an  
14    expectation and what we have to keep moving.

15                   So that notion of backing up would be  
16    another one of the concerns we would have.

17           Q     Anything else?

18           A     We talked about our ability to market the  
19    facility, the backup. Our ability to haul the  
20    business that we have sized this facility for, and  
21    marketed the facility for, would it have a  
22    restriction on our ability to meet, A, the demand of

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1 the market and, B, the revenue expectation that we  
2 have, if we were restricted, because I would assume,  
3 presumably at some point with the backup the  
4 customers might decide to not route their business  
5 with us.

6 The other effect that this potentially  
7 could have with us is by causing us to have to limit  
8 ourselves at this terminal, we may have to try to  
9 find other solutions that are less efficient, less  
10 cost effective, and unfortunately the unknown of  
11 what other municipalities may do with regard to  
12 issuing other permits at other locations.

13 Q When you say other options, what do you  
14 mean?

15 A Well, in terms of where we might decide to  
16 ultimately have to find other places to move this  
17 ethanol to. Other municipalities like Alexandria  
18 might decide to issue haul permits, then all of a  
19 sudden this cascading effect of haul permits could  
20 have a very negative and detrimental effect on  
21 interstate commerce for the movement of ethanol or  
22 any other potentially hazardous materials.

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1 Q So, if I understand you correctly, you are  
2 saying that if the haul permits unduly restrict the  
3 operations at the Van Dorn Yard, Norfolk Southern  
4 may have to look at other locations for the ethanol  
5 transloading operation, that part is correct?

6 A That is correct.

7 Q And that at those other locations in  
8 different municipalities may also be subject to  
9 local regulation?

10 A It is not my contention that we would be  
11 subject. My concern is if this permit were to be  
12 enforced and upheld that that might cause other  
13 municipalities to look to issue haul permits, and  
14 that this notion of issuing haul permits -- begin to  
15 cascade to other locations and have a much broader  
16 and potentially detrimental effect on the entire  
17 interstate commerce, from our perspective.

18 Q Okay.

19 A The other concern I have with the permit  
20 is that from our perspective, is that it is a 30-day  
21 permit, it is a temporary 30-day permit, and if it  
22 lapses for any period of time, from the time of the

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1 a break.

2 (10:50 a.m. -- recess -- 10:55 a.m.)

3 BY MR. PILSK:

4 Q First, I have what I think is a  
5 straightforward question, but what is a pig  
6 facility?

7 A That is slang for piggyback or otherwise  
8 known as intermodal truck-to-rail, literally the  
9 trailer of the truck, the semitruck, the trailer,  
10 being put onto the railcar, or a container being put  
11 onto a railcar, pig is slang for that.

12 Q And then a question about follow up on the  
13 potential impacts of actually application of the  
14 permit to the facility.

15 A Uh-huh.

16 Q The concerns you expressed about the  
17 potential for cars, railcars backing up in the  
18 system, congestion, the ability to move the ethanol  
19 through the system in a timely manner, that is a  
20 function largely of the volume of ethanol that is  
21 actually being shipped through the system; is that  
22 correct?

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1           A       I want to clarify. When you say, you are  
2 relating backing up as a result of the specific  
3 location at Van Dorn.

4           Q       And the permit of 20 trucks per day.

5           A       The application of the permit to that  
6 specific location, and then cars that are coming  
7 from multiple origins, predominantly in the Midwest  
8 to this location, backing up in our rail system.

9           Q       Correct. In other words, my question is,  
10 if the volume of ethanol decreased such that 20 cars  
11 a day were sufficient, 20 trucks a day was  
12 sufficient to accommodate the volume being shipped,  
13 those congestion effects wouldn't occur; is that  
14 correct?

15          A       If we had the restrictions imposed upon us  
16 and they were only going to ship the equivalent  
17 number of railcars to satisfy the demand then, no,  
18 we would not have congestion, because that ethanol  
19 will find another way, the market will find another  
20 way to satisfy that demand eventually, so no.

21                   MR. PILSK: Okay, I am done.

22                   MR. BRYANT: All right.

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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, DONALD R. THACKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



-----  
Notary Public in and for the  
Commonwealth of Virginia

My Commission Expires: February 12, 2010

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

NORFOLK SOUTHERN RAILWAY COMPANY,

Plaintiff,

v.

Case No. 1:08-CV-618

CITY OF ALEXANDRIA, *et al.*,

Defendants.

**AFFIDAVIT OF DOUGLAS P. McNEIL**

This day personally appeared before me, Douglas P. McNeil, who made oath and stated that the following facts are true:

1. My name is Douglas P. McNeil. I am Director, Government and Distribution Services for Norfolk Southern Railway Company.
2. I have been asked by Norfolk Southern Railway Company (“NSRC”) to submit this affidavit in Case No. 1:08cv618 being heard by the U.S. District Court for the Eastern District of Virginia concerning the Norfolk Southern Van Dorn Yard located in Alexandria, Virginia (the “Yard”) and the ethanol transloading facility located in the Yard (the “Facility”). I have personal knowledge of the information contained herein.
3. Arrival of the ethanol laden rail cars at the Facility is dependent upon several factors including: (a) when a shipper places the tank car into the national rail system; (b) the rail operations between the origin of the tank car and the Facility; and (c) space availability at the Facility.

4. At the Yard NSRC operates several transfer trains, local switcher trains, and through trains within and/or through Alexandria. The movements of rail cars within the Yard are performed by NSRC employees. The Yard operates 24 hours per day, 365 days per year. While the Facility currently performs transloading operations between 7 am and 6 pm, the Facility, like the Yard, is capable of operation 24 hours a day, 365 days a year.

5. If enforced, the 20 truck restriction on the number of trucks that could access the Facility, and the time during which transloading could take place, would impact the number of tank cars that could be transloaded, notwithstanding the number of tank cars in the interstate rail system bound for the Facility, resulting in congestion at the Yard elsewhere on the NSRC rail system. The flow of rail cars through the system would be interrupted, with rail cars that should be moving back to ethanol processing facilities for further loading instead being kept in-transit storage awaiting transloading.

6. If NSRC can only transload a limited number of trucks, that would directly affect how many rail cars can be unloaded. If the current limits are enforced, it would just be a short amount of time before the tracks at Van Dorn Yard would be full. The trainmaster wouldn't be able to switch the traffic for our other customers and service our other customers as well.

7. The adverse effect would not be limited to the Van Dorn Yard, it would have potentially congestion-related effects and adversely affect the continuous movement of freight through our yards, and so backing up freight in other yards. This adverse effect could ripple elsewhere through the NSRC rail system.

And further the affiant sayeth not.

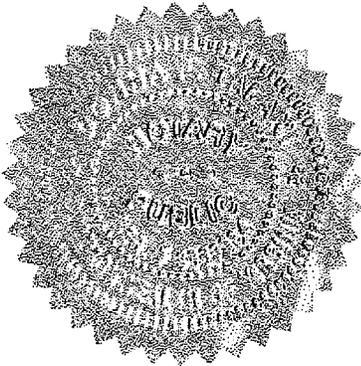
D P McNeil  
[Name]

The foregoing Affidavit was acknowledged before me this 24<sup>th</sup> day of November, 2008, by Douglas P. McNeil, an individual known unto me or who has produced sufficient and appropriate identification.

Donna J. Salerni  
Notary Public

My Commission expires: April 30, 2011

My Registration No.: 338984



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

NORFOLK SOUTHERN RAILWAY COMPANY,

Plaintiff,

v.

Case No. 1:08-CV-618

CITY OF ALEXANDRIA, *et al.*,

Defendants.

**AFFIDAVIT OF KELLEY MINNEHAN**

This day personally appeared before me, Kelley Minnehan, who made oath and stated that the following facts are true:

1. My name is Kelley Minnehan. I am a partner in RSI Logistics, parent company to RSI Leasing, LLC. RSI Leasing, LLC ("RSI") is a contractor to Norfolk Southern Railway Company ("NSRC") tasked with providing Norfolk Southern with ethanol transloading services at the Norfolk Southern Van Dorn Yard in Alexandria, Virginia (the "Facility"). I am providing this affidavit as a corporate designee for RSI in Case No. 1:08cv618 being heard by the U.S. District Court for the Eastern District of Virginia. I have personal knowledge of the matters set forth herein.

2. I understand that the parties have stipulated to the contract between RSI and NSRC as it related to the City. Neither RSI nor any of its affiliates has any other agreement with NSRC that relate to the Facility or the transportation of ethanol to the Facility other than the contract.

3. Neither RSI nor any party with whom it is affiliated has shipped, or arranged for any shipment of, ethanol to the Facility. RSI does not invoice for, collect, or receive any fee for

any transloading service provided at the Facility, other than the compensation it receives pursuant to the contract. RSI does not hold itself out as a rail carrier at the Facility and so would not be in a position of assessing and collecting from the shipper compensation for the provision of ethanol transloading services.

4. There is one charge that, pursuant to the contract, RSI is tasked with collecting for NSRC, a track occupancy charge (“TOC”). This charge is not a fee for transloading services. Instead, it is a charge based on the number of days following delivery of the tank car to the Facility that the tank car sits before unloading. RSI is required, on behalf of NSRC, to calculate and collect the charge, and remit the charge to NSRC. As compensation for keeping track of cars on which TOCs may become due, and invoicing NSRC customers for TOCs that become due, RSI is permitted to keep a small percentage of the TOCs collected, and must remit the remaining amount, by far the most significant percentage, to NSRC. The billing of TOCs is a rare event. Since the Facility opened, only one customer has been invoiced for TOC charges, and that customer has not yet paid.

5. RSI does not own the Facility. Instead, because RSI has gained a special expertise in performing the physical ethanol transloading operations at other locations across the country, RSI has been hired by NSRC to perform the physical ethanol transloading operations for NSRC at the Facility. We have much of the portable specialized equipment necessary for the transloading process – the pump systems, the hoses, the connections, the clothing and the office equipment – and pursuant to our agreement with NSRC we supply that equipment as one element necessary to get done the job we were hired to perform.

6. RSI does not have any involvement whatsoever with the delivery of the ethanol to the tank cars. RSI has no involvement in the movement of the ethanol from the Facility to the various destination blending facilities other than performance of the operations attendant with the

transloading.

7. RSI does not have any contract associated with the Facility with any of the trucking companies that arrive to pick up ethanol, the customers that send ethanol to the Facility, or the receivers that receive product from the Facility. Neither RSI nor its affiliates has any contractual, financial, or other relationship with any of the receivers or other bill of lading party. In fact, there is no relationship – financial or otherwise – with any party other than NSRC as it relates to any shipments moving through the Facility.

8. RSI is provided railroad bills of lading and other information to know what inbound railcars are destined for the Facility and approximately when those railcars will arrive, so that RSI can prepare to fulfill its transloading obligations.

9. NSRC is ultimately responsible to control, monitor and supervise the operation of the Facility. An example of NSRC's oversight and control of the Facility occurred recently when we needed to clear brush around the Facility. We contacted NSRC to determine whether NSRC wanted to clear the brush in-house or whether they wanted to secure a third party contractor to clear the brush. While I do not know how the matter was handled internally at NSRC, our contact at NSRC directed that we secure bids to clear the brush. Once we secured the bids, we turned them over to NSRC to make the ultimate determination with regard to who would clear the brush. NSRC determined the contractor, and will pay the contractor to clear the brush. This is just one of many examples of NSRC's oversight of the Facility.

10. The Facility is designed for transloading into many more than 20 trucks per day. If the City was able to enforce its truck restriction, it would not be economically feasible to continue performing the transloading operations pursuant to the contract with NSRC in light of RSI's volume based compensation.

And further the affiant sayeth not.

Kelley Minnehan  
[Name]

The foregoing Affidavit was acknowledged before me this 21st day of Nov, 2008, by Kelley Minnehan, an individual known unto me or who has produced sufficient and appropriate identification.

Connie L Hoag  
Notary Public

My Commission expires: JAN 26, 2015

My Registration No.: \_\_\_\_\_

CONNIE L. HOAG  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF INGHAM  
MY COMMISSION EXPIRES Jan 26, 2015  
ACTING IN COUNTY OF INGHAM

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

- - - - -x	
NORFOLK SOUTHERN RAILWAY,	:
Plaintiff,	:
vs.	:
CITY OF ALEXANDRIA, et al.,	:
Defendants.	:
- - - - -x	
CITY OF ALEXANDRIA,	:
Counterclaim Plaintiff,	:
vs.	:
NORFOLK SOUTHERN RAILWAY COMPANY,	:
Counterclaim Defendant,	:
and	:
RSI LEASING, INC.,	:
Third-Party Defendant.	:
- - - - -x	

Case Number  
1:08-CV-618

Case Number  
1:08-CV-618

CONFIDENTIAL 30(b)(6) DEPOSITION OF RSI LEASING,  
INC., THROUGH KELLEY MINNEHAN

Alexandria, Virginia  
Wednesday, September 17, 2008

REPORTED BY:  
CARMEN SMITH

1 Deposition of KELLEY MINNEHAN, called for  
2 examination pursuant to notice of deposition, on  
3 Wednesday, September 17, 2008, in Alexandria,  
4 Virginia, at the Alexandria City Hall, 301 King  
5 Street, Suite 1300, at 9:30 a.m., before CARMEN  
6 SMITH, a Notary Public within and for the District  
7 of Columbia, when were present on behalf of the  
8 respective parties:

9

10

W. ERIC PILSK, ESQ.

11

MEREDITH MILLER, ESQ.

12

Kaplan Kirsch & Rockwell LLP

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epilsk@kaplankirsch.com

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On behalf of City of Alexandria

18

19

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-- continued --

1 APPEARANCES (Continued):

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GARY A. BRYANT, ESQ.

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Norfolk, Virginia 23510

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gbryant@wilsav.com

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On behalf of RSI

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1 how RSI's operation would be affected if the permit  
2 were to be complied with?

3 A Is that --

4 MR. BRYANT: You can answer that, if you  
5 can. And the permit has more than one restriction  
6 in it, so if -- more generally?

7 THE WITNESS: If I could see -- do you  
8 have a copy of that? I didn't bring one with me.  
9 The one in your left hand is good, either one.

10 MR. PILSK: I didn't make copies.

11 (Deposition Exhibit 5 identified.)

12 BY MR. PILSK:

13 Q Exhibit 5 is the TNES permit dated  
14 7/3/2008.

15 A Right.

16 Q It lists as the primary contact is RSI  
17 leasing and the applicant is Dana Transport. I  
18 think there was a similar one issued with the  
19 secondary contact where the applicant is Fleet  
20 Transit. Conditions are listed on the bottom of the  
21 page and top of the second page.

22 A Number one, I definitely feel that it

1 shouldn't be in our name. If this permit was to be  
2 in anybody's name, it needs to be in Norfolk  
3 Southern's name.

4 MR. BRYANT: Right. His question was --

5 THE WITNESS: How would it affect us?

6 MR. BRYANT: Yes. How would enforcement  
7 of the restrictions affect you?

8 THE WITNESS: Under number 3, hauling is  
9 limited to a maximum of 20 trucks per day. With the  
10 investment that I have in that facility, it would be  
11 economically advantageous to our company that we  
12 couldn't operate there on only that little of  
13 volume.

14 BY MR. PILSK:

15 Q That's just straight economics, just  
16 doesn't make sense for you?

17 A It wouldn't make sense.

18 MR. BRYANT: Make sure he finishes his  
19 questions, because when both of you are talking,  
20 it's magic if she can get it all down.

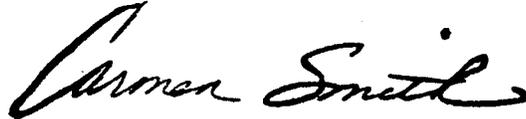
21 BY MR. PILSK:

22 Q Any other impacts to RSI from the

CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, CARMEN SMITH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



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Notary Public in and for the  
District of Columbia

My Commission Expires: MARCH 14, 2013

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

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 NORFOLK SOUTHERN RAILWAY :  
 COMPANY, : Case No. 1:08-CV-618  
                   Plaintiff, :  
           vs. :  
 CITY OF ALEXANDRIA, et :  
 al., :  
                   Defendants. :  
 - - - - -x  
 CITY OF ALEXANDRIA, :  
 Counterclaim Plaintiff, :  
           vs. :  
 NORFOLK SOUTHERN RAILWAY : Case No. 1:08-CV-618  
 COMPANY, :  
 Counterclaim Defendant, :  
 and :  
 RSI Leasing, Inc., :  
 Third Party Defendant. :  
 - - - - -x

CONFIDENTIAL DEPOSITION OF JAMES EUGENE REINER

Alexandria, Virginia

September 19, 2008

REPORTED BY:

DONALD R. THACKER

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1                   Deposition of JAMES EUGENE REINER, called  
2 for examination pursuant to notice of deposition, on  
3 Friday, September 19, 2008, in Alexandria, Virginia,  
4 at the Offices of the Alexandria City Attorney, City  
5 Hall, 301 King Street, Suite 1300, at 11:35 a.m.,  
6 before DONALD R. THACKER, a Notary Public within and  
7 for the Commonwealth of Virginia, when were present  
8 on behalf of the respective parties:

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W. ERIC PILSK, ESQ.  
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On behalf of Defendants

- continued -

THIS DOCUMENT CONTAINS CONFIDENTIAL MATERIAL

1 APPEARANCES (Continued)

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On behalf of Plaintiff

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1 generally with the haul permits that the City of  
2 Alexandria has issued?

3 A I have heard of it, yes.

4 Q What have you heard about it?

5 A I heard that, I guess the City is trying  
6 to limit how many semi trucks leave our ethanol  
7 facility on a daily basis. Is that correct?

8 Q I am asking what your recollection is.

9 A Okay.

10 Q Do you have an understanding of how many  
11 trucks that limit is?

12 A No. Well, how many 20 is, yes, I know how  
13 many 20 is.

14 Q That is what I was asking.

15 MR. BRYANT: Dancing around it.

16 BY MR. PILSK:

17 Q Okay. And one of the topics that you were  
18 designated on was to discuss how that would impact  
19 Norfolk Southern?

20 A Yes.

21 Q How would it impact Norfolk Southern if  
22 that permit conditions was strictly adhered to?

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1           A       Well, limiting the number of trucks that  
2       leave our ethanol facility directly affects how many  
3       railcars can be unloaded at Alexandria and shipped  
4       out of my yard back towards Lynchburg. So,  
5       obviously enough, if we were limited to, I don't  
6       know the exact count, but 20 truckloads equates to  
7       unloading between five and six railcars. I don't  
8       know exactly how many gallons, but we would be  
9       limited to unloading only five to six railcars a  
10      day, and of course as we have railcars come in town,  
11      that will limit our ability and keep us from being  
12      able to expeditiously and timely move this hazardous  
13      material, have the railcars unloaded and thus  
14      shipped out of town back to Lynchburg.

15           Q       Okay, and --

16           A       And --

17           Q       Go ahead.

18           A       Along with that if we are limited to how  
19      many railcars we can unload, the inbound traffic  
20      would keep, you have seen my maps of how much track  
21      space I have, it would just be a short amount of  
22      time before my tracks would be full, all of them

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1 would be full of ethanol cars, and I wouldn't be  
2 able to switch the traffic for my other customers  
3 and service my other customers as required.

4 Q Okay. And the situation you described  
5 would only occur if the shippers continued to ship  
6 the same quantity of ethanol; is that correct?

7 A I would have to say so, yes.

8 Q So in other words, if shippers shipped  
9 less ethanol there would be less cars to pump, less  
10 tank cars to pump, and if there is a limitation on  
11 the number of trucks that could go, less tank cars  
12 backed up?

13 A Exactly. If only railcar was shipped to  
14 Alexandria, we unloaded it in two and a half trucks,  
15 I wouldn't have any congestion, no.

16 MR. BRYANT: We will stipulate to that.

17 BY MR. PILSK:

18 Q And the limitation on the number of trucks  
19 doesn't interfere with the actual ability to move  
20 railcars; is that correct?

21 A Now, state that again. What was that  
22 question?

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1 CERTIFICATE OF NOTARY PUBLIC & REPORTER

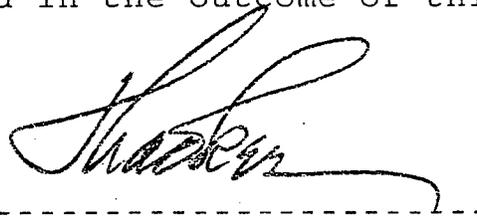
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3 I, DONALD R. THACKER, the officer before whom the  
4 foregoing deposition was taken, do hereby certify  
5 that the witness whose testimony appears in the  
6 foregoing deposition was duly sworn; that the  
7 testimony of said witness was taken in shorthand and  
8 thereafter reduced to typewriting by me or under my  
9 direction; that said deposition is a true record of  
10 the testimony given by said witness; that I am  
11 neither counsel for, related to, nor employed by any  
12 of the parties to the action in which this  
13 deposition was taken; and, further, that I am not a  
14 relative or employee of any attorney or counsel  
15 employed by the parties hereto, nor financially or  
16 otherwise interested in the outcome of this action.

17

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Notary Public in and for the

21

Commonwealth of Virginia

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My Commission Expires: February 12, 2010

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

NORFOLK SOUTHERN RAILWAY COMPANY,

Plaintiff,

v.

Case No. 1:08-CV-618

CITY OF ALEXANDRIA, *et al.*,

Defendants.

**AFFIDAVIT OF ANTHONY ROSENTHAL**

This day personally appeared before me, Anthony Rosenthal, who made oath and stated that the following facts are true:

1. My name is Anthony Rosenthal. I am the facility manager for RSI with regard to the services we provide to Norfolk Southern at the Norfolk Southern ethanol transloading facility located in Van Dorn Yard in Alexandria, Virginia (the "Facility"). I have been asked to submit this affidavit as RSI's corporate designee in Case No. 1:08cv618 being heard by the U.S. District Court for the Eastern District of Virginia. I have personal knowledge of the information contained herein

2. RSI, as Norfolk Southern's contractor for the provision of ethanol transloading services at the Facility, has access to computerized transportation information concerning anticipated deliveries of tank cars to the Facility. As such, RSI will receive communications that tell it when to expect tank cars that will have to be transloaded, and the railroad customer for whom that ethanol will be transloaded. Further, receivers of the

ethanol, or their trucking contractors, will communicate with RSI as to when to expect the arrival of trucks for ethanol.

3. I know that Kelley Minnehan, in his affidavit, states that RSI does not, and does not have the right to, market the Facility. That is true. Because we are NSRC's contractor, though, that does not mean that RSI has no contact whatsoever with the receivers of the ethanol transloaded at the Facility. RSI performs many of the paperwork functions for NSRC as an interface between NSRC and the receiver. This only makes sense because RSI is the contractor on the ground greeting the receiver's truckers as they arrive to receive the transloading services, and as they leave to move the product to a location designated by the receiver. The receiver, informed of the pending or actual arrival of tank cars at the Facility, will send trucks to receive the product. RSI, as an interface with the receiver, often will work with the receiver or the receiver's trucking contractors to ensure a smooth transloading process.

4. Further, the receiver or its trucking company contractor generally will contact RSI to tell RSI how many trucks it – the receiver – is sending to the Facility for transloading on any particular business day, and an order number associated with each truck. RSI uses this order number to ensure that the truck driver arriving at the Facility is on legitimate business. At the end of the day, RSI will inform the receiver what trucks were transloaded that day. At the request of receivers, RSI may provide other information concerning the shipments transloaded on any given day.

5. On behalf of NSRC and with instructions RSI receives from the receiver, RSI will check paperwork from truckers arriving to pick up loads, generate truck bills of lading for the truckers, and will provide paperwork (including volume information) to the truckers after

the transload. The truck bills of lading will often list the party and the location to whom the truck is bound, the name of the receiver's trucking company, a description of the product, the temperature of the product at transloading time, and other required information. RSI does this on behalf of NSRC as part of the transloading process.

6. I note that RSI may also be listed as the party who performed the transloading, often set forth on the waybill or the truck bill of lading as a "c/o party." A reference to RSI as a "c/o party" on the waybill or the truck bill of lading may be confusing, because it could be misrepresented as implying that there exists a relationship between RSI and the trucking company, the receiver or the shipper as it relates to the commodity moving under that bill of lading. There is not.

7. RSI does not have any contract associated with the Facility with any of the trucking companies that arrive to pick up ethanol, the customers that send ethanol to the Facility, or the receivers that receiver product from the Facility.

8. NSRC controls the Facility. Both NSRC and RSI provide RSI employees security training. RSI often receives requests to visit the Facility. Because it is a NSRC facility, RSI informs NSRC of these requests, and it is NSRC that consents, conditions, or refuses those requests. RSI informs NSRC about, and NSRC investigates and reports on, any incident that may even remotely be referred to as a "spill" or an escape of ethanol at the Facility. RSI cooperates with this process.

9. I deal with my NSRC representative, Mike Webb, often with regard to matters related to the Facility, as illustrated by the following recent examples:

- (a) When we needed to clear brush at the Facility, we had to determine whether NSRC wanted to do it in-house or hire a contractor. NSRC made

the decision to hire a contractor to clear the brush and handled all payments to the contractor.

- (b) When we needed fencing repaired at the Facility, I again had to contact NSRC to determine how the railroad wanted the matter handled. All arrangements for such repairs including arrangements with contractors are made by or at the direction of NSRC.
- (c) When a portion of the berm became cracked at the Facility, we again notified NSRC, who handled all aspects of repairing the crack. RSI made no decisions with regard to repairing the crack, nor did RSI pay for the cost of repairing the crack.

My contact with NSRC is on an ongoing basis, often several times per week.

10. I understand that the Permits issued by the City limit transloading ethanol to 20 trucks per day. Since the Facility opened, we have had several days on which we transloaded ethanol into many more than 20 trucks on NSRC's behalf. Indeed, we have had days on which we have transloaded ethanol into as many as 40 trucks.

11. The Facility is designed for transloading into many more than 20 trucks per day. If the City chose to enforce its truck restriction, it would not be economically feasible to continue performing the transloading operations pursuant to the contract with NSRC in light of RSI's volume based compensation.

And further the affiant sayeth not.

Anthony Rosenthal  
[Name]

The foregoing Affidavit was acknowledged before me this 21<sup>st</sup> day of November, 2008, by Anthony D Rosenthal, an individual known unto me or who has produced sufficient and appropriate identification.

[Signature] #  
Notary Public

My Commission expires: 09/30/2009

My Registration No.: 368251