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Of Attorneys for Plaintiff Oregon International Port of Coos Bay, an Oregon municipal corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

**OREGON INTERNATIONAL PORT OF
COOS BAY, an Oregon Municipal
Corporation,**

Plaintiff,

vs.

**CENTRAL OREGON AND PACIFIC
RAILROAD, INC., a Delaware
corporation.**

Defendant.

No.

COMPLAINT

Damages for Breach of Contract
(28 U.S.C. § 1332)

DEMAND FOR JURY TRIAL

JURISDICTION

This court has jurisdiction of this controversy based on the diversity of citizenship of the parties, pursuant to 28 U.S.C. § 1332. In addition, the parties have agreed, in Section 21.06 of the Lease referenced in paragraph 1 below, that any litigation between the parties must be brought in Federal Court in Oregon.

FIRST CLAIM FOR RELIEF
(Breach of Contract – Rail Spur Lease)

1.

Plaintiff Oregon International Port of Coos Bay (the "Port"), as Lessor, entered into a lease of certain lines of railroad in the Coos Bay Oregon area, known as the North Spit Rail Spur, in or about September, 2005, with defendant Central Oregon and Pacific Railroad, Inc. ("CORP"), as Lessee. Section 3.02 of the Lease states:

"During the term of this Lease, Lessee will not suspend or discontinue its operation by rail over all or any part of the Leased Premises without first applying for and obtaining from the Surface Transportation Board (the 'STB'), or any successor agency, and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation aforesaid discontinuance of operations over the Leased Premises; provided, however, the Lessee will not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue its operations on the Leased Premises, without first giving Lessor One Hundred Eighty (180) days' notice of Lessee's intent to do so."

2.

On September 21, 2007, CORP unilaterally discontinued its operations on the North Spit Rail Spur. Prior to this discontinuance, CORP did not provide one-hundred eighty (180) days notice to the Port, as required under Section 3.02 of the Lease. Moreover, since the time that it ceased operations, CORP has not provided any information to the Port as to whether it will resume operations over the North Spit Rail Spur, and perform its other obligations under the Lease.

3.

CORP's cessation of operations is apparently related to its suspension of rail service on the railroad line that it operates from Eugene to Coquille, Oregon. On September 21, 2007, CORP embargoed its Eugene to Coquille line ostensibly because of safety problems in three tunnels. Upon information and belief, CORP knew or should have known about the dangerous and deteriorating condition of its tunnels for a period longer than the one-hundred eighty (180)

day notice period that must precede any cessation of operations over the North Spit Rail Spur. Accordingly, the September 21st embargo did not, and does not excuse CORP's breach of Section 3.02 of the Lease. In making this allegation, the Port does not concede that an embargo can excuse a breach of Section 3.02 of the Lease by CORP.

4.

By failing to provide the required advance notice, CORP breached the Lease, and its breach deprived the Port of the opportunity to take actions to prevent the loss of rail service on North Spit Rail Spur, to make arrangements for replacement transportation service, and otherwise to protect its substantial investment of \$5,000,000 in the spur.

SECOND CLAIM FOR RELIEF

(Breach of Contract – Donation Agreement)

5.

The Port realleges the allegations contained in paragraphs 1 through 4 above.

6.

On August 9, 2000, the Port entered into an "Agreement for Donation of Coos Bay Bridge," with CORP, and the Union Pacific Railroad Company (respectively "Donation Agreement" and "UPRR"). In the Donation Agreement, UPRR donated its ownership interest in a railroad bridge known as the Coos Bay Bridge which is located over Coos Bay, a portion of which is in the City of North Bend, Coos County, Oregon. In the Donation Agreement, the Port also obtained certain rights against CORP, which exist under a lease agreement between UPRR and CORP known as the "Lease Agreement Bellevue to Black Butte and Cordes to Coquille" ("UPRR Lease"). The UPRR Lease is dated December 31, 1994 and governs CORP's lease of certain railroad lines between Cordes and Coquille, Oregon, including those over the Coos Bay Bridge. CORP executed the Donation Agreement, and expressly agreed and acknowledged that the Port obtained certain rights existing under the UPRR Lease.

7.

Section 3.02 of the UPRR Lease restricts CORP's ability to cease operations over the railroad lines, including those over the Coos Bay Bridge. Prior to taking any action to suspend or discontinue its operations, CORP must first receive the "written concurrence from Lessor." In breach of this obligation, CORP ceased operations over the Coos Bay Bridge railroad line without the written concurrence of the Port. In fact, CORP did not even seek such concurrence from the Port prior to its unilateral cessation of operations.

THIRD CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

8.

The Port realleges the allegations contained in paragraphs 1 through 7 above.

9.

CORP's actions as alleged above, and its failure to keep the Port informed of its intentions with regard to the North Spit Rail Spur and the Coos Bay Bridge, despite inquiry by the Port, constitute a breach of the implied duty of good faith and fair dealing, a duty which is implied in every contract entered into in the State of Oregon.

10.

During 2005 and 2006, the Port invested \$5,000,000 in the construction of the North Spit Rail Spur. By breaching its contractual obligations to the Port as explained above and its duty of good faith and fair dealing, CORP deprived the Port of the opportunity to take measures to protect its substantial investment in the spur, and severely undermined the value of that investment.

11.

The Port is entitled to an award of damages which it has suffered as a result of the breaches set forth above, in an amount to be determined at trial, which is not less than \$5,000,000.

12.

The Port is also entitled to judgment against CORP for its reasonable attorney fees incurred herein, pursuant to Section 20.04 of the UPRR Lease.

WHEREFORE, plaintiff prays for judgment as follows:

1. On plaintiff's first claim for relief, judgment in favor of plaintiff and against defendant Central Oregon and Pacific Railroad, Inc. in an amount not less than \$5,000,000;
 2. On plaintiff's second claim for relief, judgment in favor of plaintiff and against defendant Central Oregon and Pacific Railroad, Inc. in an amount not less than \$5,000,000;
 3. On plaintiff's third claim for relief, judgment in favor of plaintiff and against defendant Central Oregon and Pacific Railroad, Inc. in an amount not less than \$5,000,000;
 4. For plaintiff's reasonable attorney fees, costs and disbursements incurred herein;
- and
5. For such other and further relief as the court deems appropriate.

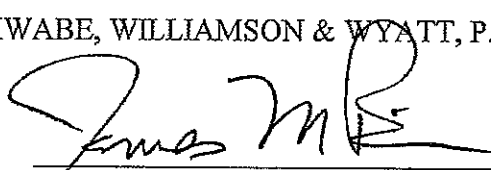
Plaintiff hereby demands a jury trial.

Dated this 19TH day of October, 2007.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By:



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