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**Issue 10#11A  22 November 2010**

*Article unchanged from e-bulletin.*

**Blue type in article: changes from e-bulletin.*

Blue table of contents entry: new article.

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PW/NECR: Good news, potential rail customers; bad news of more ethanol derailments.*

Canso/Searsport/Sydney: Needed as overflow ports?*

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[No report.]

**CONNECTICUT**

[No report. See Ethanol in Regional.]

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CN vs MMA. By date in November: Map.

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15: Burkhardt - mill, NBSR, should want 2 RRs.

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**RAIL SHIPPERS/RECEIVERS**

A cross-reference to companies mentioned here.

**PEOPLE, POSITIONS, EVENTS**

[No report.]

FROM THE PUBLISHER

Happy Thanksgiving!

After that weekend, I am driving my daughter to college visits in Baltimore (Goucher), Pennsylvania (Susquehanna and Elizabethtown), and New York (Hobart and William Smith). I will have e-mail contact, but not phone contact.

- Chop Hardenbergh  Next formal issue 6 December
REGIONAL ISSUES

PAS: INTERMODAL*

8 November THE NS INTERMODAL CORRIDOR STRATEGY IS HAVING GREAT SUCCESS, according to CFO Jim Squires, speaking at the Baird 2010 Industrial Conference. Year to date the Chicago-New York corridor is up 20%, the Crescent Corridor linking New Orleans/Memphis with New Jersey and New England is up 31% and the Titusville Corridor between Chicago and its namesake Florida terminal is up a whopping 167%.

The two joint ventures, the Meridian Speedway with KCS and the PanAm Southern with Pan Am Rail, are up 40% and 36% respectively. These numbers are proof indeed that the domestic intermodal corridor strategy really works, block swaps and all. [cited by Roy Blanchard in his Week in Review 12.Nov.10]

Long PAS intermodal/autorack trains

According to one knowledgeable observer: ‘AYMO [AYer-MOhawk (Schenectady) train] quite often is 7000 to 8000 feet long. Crescent (CPF477) is the only place it will fit without blocking crossings at Mohawk. [T]wo days the train was over 9500 feet which won’t even fit at Crescent....the train [had to go] to Mohawk and hold...at Alplaus Crossing for the recrew.

‘The original agreement on these trains is they are not supposed to exceed 7000 feet without the CP Operations Manager authority but as we all know, many days both 934 and 935 [the D&H version of the train via Binghamton] exceed 7500 feet so they can’t meet at Richmondvile.

‘Last week [PAS started an AYMO supposedly] 9100 feet on AYMO...was over 9500 feet. Had to run it to Alplaus to move other traffic.’ [e-mail to ANR&P via e-list 10.Nov.10]

On 14 November, MOAY led by three NS locomotives had 13 autoracks and 104 TOFC/COFC and four empty slots. AYMO had six autoracks and 106 C/TOFC with two empty slots. [e-mail to ANR&P via e-list 10 & 14.Nov.10]

Work on new Mechanicville yard

Workers are spending seven days a week preparing the new yard [yard tracks to be open 2Q11—see 10#10A]. [e-mail to ANR&P via e-list 14.Nov.10]

John Connell, regional director of the US Army Corps of Engineers, said the Corps had issued a permit for the work on 9 September [see 10#08A]. [ANR&P discussion 16.Nov.10]

NECR/PW: ETHANOL DERAILS*

9 November, Willimantic. SIX CARS OF A LOADED ETHANOL CONSIST DERAILED, with two falling over, in the NECR Willimantic Yard. [This would not generate so much interest had not loaded ethanol cars derailed on PW just east of Willimantic in March. Furthermore, PW is currently upgrading the tracks on the Willi—see 10#10B—to permit ethanol traffic there by the end of the year. Is this move jinxed? Editor] An NECR crew was pulling the 78-car consist south on the PW track in the yard.

R.J.Corman crews rerailed three by the next day, and were unloading the ethanol from two cars on their sides. [PW e-list] PW spokesperson Marie Angelini said the train originated in Illinois and was headed to Providence. The cause of the two prior derailments is attributed to “track conditions...on that particular section of track on that particular day,” Angelini said. [Greg Smith in Norwich Bulletin 9.Nov.10]

12 November incident

On 12 November three cars of ethanol on a 41-car train were brought over the mountain by VRS into Bellows Falls for an interchange with NECR. On the connector in front of the Bellows Falls station, three cars derailed, fouling the NECR main. [David Rose in NERAL New England photo archive 12.Nov.10]
The accidents
March 11 Four tank cars of ethanol in a PW train roll off the PW Willimantic embankment [see 10#03A].
May 12 Three cars with latex of a nine-car PW train derail in Lisbon on the line from Providence to Groton [see 10#05B].
November 9 Five cars of an NECR 78-car ethanol consist derail in Willimantic; two fall over.
November 12 Three cars of a 41-car ethanol consist derail in Bellows Balls.
November 13 Some cars of a PW ethanol consist derail on the north tip of the Groton wye.

Investigation
The FRA will conduct an investigation of three derailments this year in the area, and take three months to six months to complete, said Warren Flatau, FRA spokesperson on 12 November. “This is the type of thing that draws our attention,” Flatau said on 12 November.

The Connecticut Department of Transportation also is taking a “active interest” in the accidents, Flatau said. “It is the jurisdiction of the FRA, but we want to observe and will do anything they ask us to do,” ConnDOT spokesman Kevin Nursic said.
The Willi and ConnDOT

The line from Plainfield to Willimantic, the ‘Willimantic Branch’ or ‘Willi’, is owned by PW from Plainfield to the box plant in Versailles [Town of Sprague]. From that point to the junction with NECR in Willimantic [Town of Windham], the line is owned by ConnDOT and leased to PW.

Possible new customers and FRA grant

Sprague First Selectman Catherine Osten in October applied for a $6.6 million grant from the FRA for work on the Willi. Two manufacturing companies are interested in locating facilities near the line in Sprague. During November, she plans to testify before a state group in New Haven, hoping to get greater support for upgrading freight rail lines. Preston First Selectman Robert Congdon, who heads the transportation committee of the Southeastern Connecticut Council of Governments, also is slated to speak.

Osten said she would welcome a discussion with Connecticut’s new transportation commissioner after that person is selected by Governor-elect Dan Malloy.

“That would have a pretty significant impact,” said John Markowicz, executive director of the New London-based Southeastern Connecticut Enterprise Region. “Something has to be done or that line might be shut down. That would definitely hurt commerce.” {James Mosher in Norwich Bulletin 12.Nov.10}

“We knew ethanol was going through the town. We know most everything coming through this area. They keep us appraised to what they're transporting,” said Osten. {WFSB television 15.Nov.10}

Competition for the ethanol traffic

Until D&H, VRS, NECR, and PW began using the ‘Green Mountain Gateway’ to deliver the ethanol to Motiva in Providence, CSXT had the traffic, which it interchanged with PW in Worcester [see 06#07B, 07#07B].

Some close to PW fear that CSXT will view the mishaps as an opportunity to recapture some or all of the ethanol move. {e-mail to ANR&P from source}

Track and operating safety

On 16 November, a Canadian Pacific Railway crew of road foremen out of Saratoga Springs, New York, according to one of them, were performing a hi-rail inspection of the Green Mountain Gateway [see photo]. The foreman added that traffic levels are anticipated to be sustained or perhaps increase via the Gateway. {Kevin Burkholder in NERAIL e-list 16.Nov.10}

According to one experienced engineer, ‘front to back sloshing can cause problems plus handling unit trains of liquid is not within the scope of most Northeast engineers. Track profile, condition, and train handling can all be factors with large strings of bulk liquid. Railroad tank cars do not normally have any baffles to control the slosh so yes [the unit train of loaded tank cars] can be a problem.’ {e-mail to ANR&P 16.Nov.10}

FRA inspectors have arrived, according to a source with the agency. {e-mail to ANR&P from source who wished to remain anonymous}

CANSO, SEARSPORT, SYDNEY*

The fate of these potential container ports, they each say, depends upon demand, in particular the supposed future tsunami of containers which will overwhelm existing East coast ports. Two interesting stories:

Other ports already preparing

Atlantic coast U.S. seaports from Eastport through Key West are preparing for an expected increase in cargo generated by an expansion of the Panama Canal scheduled for completion in 2014. Preparations at East coast ports [the report briefly covers the four largest: NY/NJ, Norfolk, Savannah, and Charleston] include installation of larger cranes and dredging channels to accommodate container ships with nearly two and one-half times the capacity of current Panamax vessels, the largest ships that now transit the canal. {US Bureau of Transportation Statistics 10.10 http://www.bts.gov/publications/bts_fact_sheets - the report has great graphics of the US East coast port statistics}
£30 million UK box terminal closes before it is even opened
A container terminal in Great Yarmouth, a port north of London on the North Sea, was due to open in 1Q10. Built for £30 million, it has an initial annual capacity of 70,000 TEUs and 200 metres of quay, with expansion to grow to 250,000 TEUs and a 380-metre quay. It had budgeted to handle around 50,000 TEUs this year.

The terminal is 60%-owned by Singapore’s PSA International, with 40% held by Great Yarmouth port owner International Port Holdings.

The port has postponed opening the terminal, and switched to growth sectors such as offshore energy. Great Yarmouth Port CEO Eddie Freeman said: “We are reacting to the reality that demand from the offshore sector, and in particular organisations involved in energy generation through offshore wind farms, is on a steep growth curve, while in contrast, the UK container scene is still recovering from the financial crisis.

Local press reports suggest that the port’s two new £7 million (US$11.2m) container cranes have not been used, other than for testing, and will be moved to create extra space for the offshore business. {Damian Brett in Lloyd’s Loading List 15.Nov.10}

MAINE

CN v MMA: NEXT STEP*
8 November, Bangor. JUDGE JOHN WOODCOCK DENIED CN’S MOTION TO REMAND TO STATE COURT, during a telephone conference this day. The case will proceed in federal court, looking first at the question of preliminary relief: CN and Twin Rivers would like a ruling granting CN track access into the Twin Rivers mill while the court considers the gravamen of CN’s complaint: that the agreement giving CN trackage rights had a mutual mistake and should have included the mill in the rights [see map and 10#10B].

Milepost location
A map filed in court shows the location of the end of the main line, the point at which, according to MMA, the CN trackage rights end [on the map, VB 0.0].

The state will purchase to MP 260.0, the end point of the trackage MMA was proposing to abandon. While the geographic location of MP 260.0 is not certain, it does lie near what was Gilman’s Siding, a location without a customer at this point. {ANR&P e-mails from source close to state negotiations}

Some nearby rail customers
One rail customer now moving paper entirely by truck is located a mile east of Pelletier Siding: Albert Farms. Ken Gagnon manages the facility [see 07#12B] located at Elmo Siding (just off the map to the east) also labelled ‘siding VO2’. He said the spur at Pelletier Siding (‘siding VO1’) is not used by the customer but only by MMA to store cars.

“We are busier than ever now that the railroad has pulled back service [see Sass comment in 10#10B].” Loads are moving in and out by truck. “We are making out” well, said Gagnon, “but it’s not good for Twin Rivers. Rail is much cheaper.” Albert Farms has its own 25-truck fleet, which is moving paper as far as California, though “mostly to the Midwest,” with RR Donnelly in Illinois a major receiver.

Gagnon used to work for the railroad. “I can remember when 95% of the paper moved by rail. Now, it’s less than 50%.” {ANR&P discussion 12.Nov.10}

Twin Rivers traffic
Per Brian Sass’ affidavit [see 10#10B], Twin Rivers will move near 4000 carloads in 2010. Based on a 300-day switching schedule, that would mean near 15 carloads a day, or 15 in, 15 out each day, roughly what MMA reported for early November [see other article].
The Google aerial view shows 174 cars on spurs at the mill, in the MMA yards, or on MMA sidings. {ANR&P count from Google website}

CN v MMA: BURKHARDT

15 November. RAIL CUSTOMERS SHOULD WANT MMA TO STAY, said MMA Chair Ed Burkhardt. He was perplexed by Twin Rivers’ desire to sign a traffic deal exclusively with CN: ‘Why would Twin Rivers want to take their rail transport options from two to one? This flies in the fact of good sense, but I must admit sometimes good sense is a rare commodity.’

MMA should stay
Some think that Pan Am and NBSR plan to, or should, buy MMA. Burkhardt replied to that cogitating: ‘Why would NBSR want to take its options at the west end of its railway from two to one, and what would the customers think? Let’s focus on the word CUSTOMER. Sometimes it seems they aren’t at the table when some grand scheme is being hatched, but they will make themselves known.’ {e-mail to ANR&P 15.Nov.10}

CN v MMA: ARGUMENTS

16 November, Portland. JUDGE JOHN WOODCOCK WILL ISSUE A DECISION LATER on CN’s motion for a temporary restraining order to require MMA to give CN direct access to the Twin Rivers mill in Madawaska.

He did grant Twin Rivers its motion to intervene in the case, and accepted a map showing the various lines and boundaries. {court website, case 1:10-cv-00452-JAW}
1. BACKGROUND

From the MMA Memorandum of Law [see below]

1.1 The 2001 deal

‘Prior to 2001, traffic handled over the CN route was physically switched by MMA [sic - MMA means BAR] at the mill/yard and then transported – by MMA [sic] – all the way from the mill to St. Leonard. At St. Leonard, MMA [sic] “interchanged” with (i.e. handed over the traffic to) CN.’ {Memorandum page 4}

‘This arrangement was referred to as joint service using a “through route” (sometimes called a “joint through rate” arrangement). MMA [sic] and CN established their respective portion of the total fee for movement between the mill and the origin or destination. MMA [sic], as the origin carrier for outbound shipments, billed TR [sic then Fraser] for the entire amount of the movement and then remitted CN’s share to CN. Grindrod TRO Decl. at ¶ 9.

In 2001 MMA predecessor Bangor and Aroostook Railroad (BAR) agreed on the $5 million deal giving CN trackage and haulage rights to Madawaska, as outlined in an Easement and a Trackage Rights Agreement with a term of 99 years. In addition, the two railroads agreed to a five-year Junction Settlement Agreement.

Both sides agree that the end point of the CN trackage rights, at least as described in the documents, lies short of the mill itself [see map].

1.2 Junction Settlement Agreement (haulage)

‘The [2001] Junction Settlement Agreement enabled CN to negotiate directly with Twin Rivers for the transportation charges between the mill and the origin or destination, and then sub-contract to MMA responsibility for switching at the mill and transportation service along the Van Buren line between the mill and St. Leonard. That is, MMA would provide the cars; load, switch, and sort them at the mill; and then haul them from the mill to St. Leonard [for a price–see below], over the Van Buren subdivision – as it had done before – but now CN would have a direct commercial relationship with Twin River. MMA would be handling such traffic “for the account of” (i.e. on behalf of) CN. This arrangement was known as a “haulage” arrangement, and replaced the “through route” arrangement the parties had been using. Grindrod TRO Decl. at ¶ 11. [See box for three kinds of pricing.]

1.3 CN seeks to exercise trackage rights

‘Several times between 2001 and June 2010, CN inquired about inspecting the line between Madawaska and St. Leonard, a necessary prerequisite for exercising the trackage rights, but never followed through.’ Grindrod TRO Decl. at ¶ 12.

‘In June 2010, CN informed MMA that it wished to exercise its trackage rights all the way “into the mill.” CN wrote that it wanted to arrange for the qualification of its crews to operate over MMA’s track, as required by the TRA, and to inspect the line. MMA responded that the TRA did not permit CN to reach the mill itself, since the TRA only permitted CN to reach milepost 0.0 – a point approximately three fourths of a mile to the east of the mill. MMA was willing to let CN run its trains to milepost 0.0, but indicated that MMA would continue to provide the switching services at the mill and deliver and receive cars at milepost 0.0.’ Grindrod TRO Decl. at ¶ 13.

‘Over the next several months, CN and MMA engaged in extensive communications about their respective rights under the TRA. MMA offered to extend the Junction Settlement Agreement, which was to expire by its terms on October 31, 2010, and the parties discussed the terms and conditions that might apply during an extension. Grindrod TRO Decl. at ¶ 16.

‘On October 29, 2010, without any advance notice, CN commenced this action in the Aroostook County Superior Court in Caribou, Maine. TR moved to intervene. MMA filed a removal to this Court.'
1.4 Continued service to Twin Rivers

‘Since the filing of CN’s Complaint on October 29, 2010 and the expiration of the parties’ haulage billing arrangement [the Junction Settlement Agreement] on October 31, 2010, rail traffic has continued to move into and out of the Twin Rivers mill in volumes that reflect normal business levels. On October 30 and October 31, a total of 14 carloads moved from the mill outbound over the MMA route. Between Monday, November 1 and Thursday, November 11, a total of 73 cars have been handled into and out of the mill. Of this total, 19 moved via the CN route and 54 moved over the MMA route.

Despite TR’s apparent complaints about MMA’s service, TR continues to use MMA. Grindrod TRO Decl. at ¶ 26. The only thing that has changed is the billing arrangement. The haulage system has been replaced by a Rule 11 [see box] arrangement, and the parties are discussing other billing options. TR’s paper is still being delivered.

1.5 Twin Rivers wants only CN

‘Indeed, the instant dispute appears to have drawn CN and TR even closer: they have a joint enemy in MMA. CN notes that “Twin Rivers has loudly proclaimed its dissatisfaction” with MMA. Br. at 21.

CN notes that TR “does not want MMA to be the exclusive provider of service.” Supl. Br. at 7. Instead, TR “wants to” use CN, “of course.” Id.’

2. CN ARGUMENTS IN FAVOR OF THE T.R.O.

CN argues that the Trackage Rights Agreement gives it the right to run trains into Twin Rivers, and that the language in the Agreement ending the right short of the mill was a ‘mutual mistake’.

2.1 Admissions by MMA about access to mill

According to an affidavit from Ed Burkhardt, chair of MMA, submitted in the litigation attempting to overturn the
Burkhardt noted that ‘BAR quickly ran through the cash received from CN, while the concessions made to CN in the Contracts had an immediate devastating effect on BAR’s revenues and cash flow.’

Moreover, in the appeal by the BAR bankruptcy estate to the federal First Circuit Court of Appeals, the Court wrote that ‘The parties also entered into a Trackage Rights Agreement. Under this agreement CN acquired limited local trackage rights which allowed it to run its own trains over the Madawaska lien to the Fraser paper mill.’

And in the STB proceeding to revoke the deal, MMA wrote that ‘BAR...granted CN haulage rights and trackage rights to serve a single shipper, Fraser Papers, Inc.’

2.2 CN argument
‘MMA cannot now reasonably or rationally dispute in this Court what it has admitted so often and so clearly before the other tribunals that have considered and upheld CN’s rights to serve the Twin Rivers paper mill directly.’ {text of Memorandum of Law filed in state court 1 November, before the removal of the case to federal court, now found in case 10-cv-000542}

3. MMA ARGUMENTS AGAINST THE T.R.O.
In order to grant the temporary restraining order, MMA argued, the judge must find that CN has shown both a substantial likelihood of succeeding on the merits, and a suffering of irreparable harm. MMA argued that CN failed to meet either requirement.

3.1 CHANCE OF SUCCESS: very low
MMA argued that the plain language of the agreements stops CN access short of the mill. MMA noted that the Easement Area in the Easement Deed was defined as: “[a] portion of the line of railroad known as the Van Buren Branch of the Bangor and Aroostook Railroad, all in the State of Maine, extending from a point of connection with the Main Line in Madawaska (Milepost 264.13, Milepost V 0.0), and running through Madawaska, St. David, Grand Isle, Lille, Notre Dame, Parent, Violette, and Keegan to Van Buren (Milepost V 24.1), all in the County of Aroostook. [V 0.0 is short of mill–see map.]’

The Court should look no further. “The interpretation of an unambiguous writing must be determined from the plain meaning of the language used and from the four corners of the instrument without resort to extrinsic evidence.” Portland Valve, Inc. v. Rockwood Systems Corp., 460 A.2d 1383, 1387 (Me. 1983)

3.1.2 The language of the agreement
Other language in the Trackage Rights Agreement supports the notion that CN could bring its trains to MP V 0.0 but no further. For example, MMA pointed to Article 2(d) which states: ‘Except as may otherwise be provided by this Agreement, CN shall not use any part of the Subject Trackage for the purpose of switching, storage, . . . or the making or breaking up of trains . . .’

‘CN admits that it is barred from the mill under the TRA and Easement as written, see CN’s Br. at 9 (“anomalous result”), but gamely suggests the Court can fix that problem by divining the true “intent of the parties,” which, according to CN, happens to contradict several contractual provisions. Indeed, CN believes the Court can do this without reviewing a single contemporaneous email, hearing from a single contemporaneous witness, or weighing the testimony of a single expert.’

3.1.3 No mutual mistake

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1Burkhardt noted that ‘BAR quickly ran through the cash received from CN, while the concessions made to CN in the Contracts had an immediate devastating effect on BAR’s revenues and cash flow.’

‘CN paid $5 million for commercial access for the 5 years set forth in the TRA, not physical access for the 99 years set forth in the Easement. See Grindrod TRO Decl. at ¶ 41 (“No one in his right mind would have given up 99 years of direct physical and commercial access to a customer located on its lines for a payment of only $5 million.”).

3.1.4 Trackage Rights Agreement operative document
‘As the Court has noted, however, the Easement is not the operative document in this dispute. (“the essence of [CN’s] contention does not involve the construction of the scope of its rights under the easement itself”). Rather, the Easement merely incorporates and attempts to preserve the TRA. The Easement expressly states that it is being granted “for the uses and purposes defined and described in that certain Trackage Rights Agreement dated March 14, 2001” Ex. B (Easement) at 1 (emphasis added). CN has “the right to make every use of the Easement Area for Grantee’s purposes in accordance with the terms and provisions of the [TRA].” Id. (emphasis added).

‘Even if this case did turn on the Easement (which it does not), MMA has never objected to CN’s exercise of the Easement. CN is welcome to operate its trains over the Van Buren subdivision, from St. Leonard to milepost 0.0, exactly as set forth in the Easement, as long as CN complies with the various operational provisions of the governing TRA.

3.1.5 Arbitration coming
The arbitration clause in the Trackage Rights Agreement ‘– which MMA will formally invoke in a motion filed in the next 24 hours – will bar the arbitrator from rewriting the TRA. CN has shown no likelihood of success in this Court, and it has zero chance in arbitration. It has shown no irreparable harm. The Court should deny its Motion.’

‘When it reaches arbitration, CN is very, very likely to lose. Article 20 expressly prohibits the arbitrators from rewriting the terms of the TRA... (“The arbitrators shall have no power to change any of the provisions of this Agreement in any respect (nor shall the arbitrator have the power to make an award of reformation). That is, the arbitrators may not cross out “0.0” and write in milepost “263.17.” They may not cross out Article 2(d). They may not reform Article 2(a). They may not draft switching rules and procedures where there are none. Even more than the Agreement’s integration clause, see id. at Art. 23(b), Article 20 expressly bars the relief that CN is seeking. CN cannot show a likelihood of success under these circumstances.’

3.2 NO IRREPARABLE HARM
MMA argued that neither CN nor Twin Rivers is suffering irreparable harm. The mill is getting served [see above, 1.4].

‘When the parties’ Junction Settlement Agreement expired on October 31, 2010 (despite MMA’s efforts to extend it), CN and MMA did not – as CN’s breathless Motion suggests – collapse into a Hobbesian state of nature.
MMA did not block traffic. It did not stop servicing the mill. It did not stop handing off cars to CN. Rather, MMA continued to run its own trains over its own tracks and to hand off the traffic to CN, just as it had done for years, and just as it was required to do by law. The only thing that changed, essentially, was the billing arrangement among CN, MMA, and their joint customer.

‘And despite its calls for “competition” in rail service (of which there is plenty already), CN is in fact seeking the opportunity to shut out MMA entirely, to monopolize TR’s traffic under a brand new agreement.

3.2.2 No financial danger
MMA’s finances are not “shaky” [as alleged by CN–see 10#10B]. Grindrod TRO Decl. at ¶ 33. Indeed, MMA has been and will continue to meet its obligations in the ordinary course of business. Furthermore, MMA is about to receive a $20.1 million cash infusion from the state of Maine.’

3.2.3 Harm to MMA: no traffic from Twin Rivers
‘CN blithely asserts that “MMA will suffer no legally-cognizable harm” if a TRO is granted, arguing that MMA would be able to continue to provide service. Br. at 23. The reality is that an injunction here would enable CN to implement its much-touted agreement with TR and sideline MMA entirely. See Memo. of Law of TR in Supt. of Pls. Mot. for Emergency Injunctive Relief (Oct. 29, 2010) at 2 (describing a new contract TR has negotiated with CN); Aff. of Brian Sass (Oct. 29, 2010) (filed with Complaint).

‘TR has offered a glowing assessment of the new deal’s economics. Rather than splitting TR’s traffic roughly 50-50 with CN, TR seems poised to give MMA none, not even switching. Such a diversion would mean an annual loss of revenue to MMA of approximately $3 million, 10% of its total annual revenue. Grindrod TRO Decl. at ¶ 37. MMA is healthy now, but TR’s business is an important part of that health.

‘An injunction would jeopardize this sale by killing the profitability of those abandoned lines for any prospective buyer [but see other article]. It could also lead to the abandonment of the Madawaska-St. Leonard line, dislocating MMA from the line entirely.’

**FRASER OWNS SOME TWIN RIVERS**
The proceeds from the sale of the specialty papers assets to Twin Rivers were used, in part, to settle certain claims against Fraser Papers. Fraser Papers continues to own a 49% minority equity interest in Twin Rivers as well as certain unsecured notes issued by Twin Rivers. These assets are expected to be distributed to creditors under a plan of arrangement and distribution in the coming months. The Company is in the process of selling its remaining assets which include a paper mill in Gorham, New Hampshire and two lumber mills in northern Maine. {Fraser press release 20.Oct.10}

3.2.4 Harm to MMA: CN cannot serve mill without MMA?
‘In addition to owning the only set of tracks that run next to and physically connect with the mill, MMA owns all of the tracks located on the TR property (other than the few tracks actually inside the mill buildings which are owned by TR), as well as a switching and sorting yard adjacent to the mill [see map]. MMA performs switching activities within the Twin Rivers facility 6 days a week. This switching activity consists of moving cars at the direction of Twin Rivers’ employees so that they can be loaded or unloaded and then placed in the yard in order to be transported between the mill and the origin or destination. Grindrod TRO Decl. at ¶ 7.

‘Even CN concedes that it needs MMA’s sorting yard and switching tracks in order to effectuate its plan. See, e.g., Proposed Order at ¶ 2(b) (addressing “switching” separately from the line of “railroad track” described in ¶ 2(a)).’ {texts of documents found on court website case 10-cv-00452}

**CN v MMA: MEETING?**
16 November, Bangor. **GOVERNOR JOHN BALDACCI ASKED MMA OFFICIALS TO MEET WITH THE PAPER COMPANY** and settle their differences, in an hour-long gathering this day. Twin Rivers was also invited, according to Twin Rivers CEO Jeffrey Dutton; officials were unavailable to meet with the governor’s office because
they had a board meeting at the same time. But, he said during an interview on 18 November, “We are absolutely interested in talking to the MM&A and the governor and still remain open to do that.

**Twin Rivers position**

Dutton said new MMA rates are apparently significantly higher than before the expiration of the Junction Settlement Agreement. The mill remains unhappy with the rail line’s service.

“Although we’re doing well as a new company, cash is still a challenge for a company that has just emerged from bankruptcy protection,” Dutton said. “If we have to inventory paper, whether it’s in the warehouse or because of the transit times, that ties up cash; that ties up financing.”

Dutton said the mill sought to deal solely with CN.

**Other facts**

MMA President Bob Grindrod on the same day questioned Twin Rivers’ claims that continuing the present arrangement would threaten the company’s profitability. “Why is that changing? If they are profitable now, under the status quo, what makes them less profitable if the status quo continues?” His railroad’s service to the mill is “consistent.”

“They don’t need to try this in the press,” Grindrod said. “They ought to call us, and we would happily sit down and work out all these details. But there is this tendency on their part to say, ‘Well, let’s make a big media splash.’ How many times did they [say] that their mill was going to close?”

Grindrod was referring to Twin Rivers’ press statements during the company’s time last year in bankruptcy protection, when company officials called on the mill’s union workers to accept a new contract carrying a pay cut or the Madawaska mill likely would fold.

Grindrod said losing the company’s business likely would cost the railroad about $3 million in revenue annually. About 10 percent of MM&A’s traffic comes from Twin Rivers, its largest single customer. {Matt Wickenheiser and Nick Sambides in **Bangor Daily News 19.Nov.10**}

**CN v MMA: NEW OPERATOR HARM?**

17 November, Augusta. **IF TWIN RIVERS SENDS ALL ITS TRAFFIC TO CN, WILL THAT HARM THE LINE SALE?** MMA, in its arguments to federal court [see other article], said: ‘An injunction would jeopardize this sale by killing the profitability of those abandoned lines for any prospective buyer. It could also lead to the abandonment of the Madawaska-St. Leonard line, dislocating MMA from the line entirely.’

However, MDOT’s director of the rail program, Nate Moulton, said the agency ‘did do an analysis without the Twin Rivers traffic after they announced in June they were going the CN route. The analysis did not stop us from proceeding. [W]e would love to have some of that traffic but are not counting on it.’ {e-mail to **ANR&P**}

**CN v MMA: ARBITRATION**

18 November, Bangor. **MMA FILED A MOTION TO REQUIRE ARBITRATION**, as indicated earlier [see 16 November].

**Preference for arbitration**

MMA referred to Article 20 of the Trackage Rights Agreement, which states irreconcilable disputes ‘shall be resolved’ by arbitration [see 10#10B]. A 1925 federal statute was passed ‘in order to overcome judicial resistance to arbitration and to declare a national policy favoring arbitration of claims that parties contract to settle in that manner’ and ‘any doubts concerning the scope of arbitral issues should be resolved in favor of arbitration.’ The statute requires the court to ‘compel arbitration for disputes that it determines are subject to the arbitration clause...

‘MMA and CN have an irreconcilable dispute; the dispute concerns trackage rights; the TRA governs those trackage rights (in great detail). The dispute therefore “shall” be resolved by submitting it to arbitration’” [as stated in Article 20].

Apparently during the 16 November hearing on the Emergency Motion for Temporary Restraining order, CN
argued that the particular dispute, whether the parties had made a mutual mistake about the extent of the trackage rights agreement, was not subject to arbitration. MMA disagreed.

The arbitration subclause Article 20(b)’s ‘requirement that the arbitrators have “experience in the field of rail transportation” ...suggests the intent of the parties: to render difficult (and therefore rare) the assertion of frivolous claims that might momentarily distract a generalist arbitrator but which would be quickly dispatched by a rail expert.’

Under subclause 20( c) the ‘arbitrators are not permitted to (1) “change any of the provisions”; (2) “award reformation;” (3) “award consequential damages;” or (4) award “punitive damages.” Each is a restriction of “award[s].”’

MMA argues that merely because the remedies are limited, that does not mean the jurisdiction of the arbitrator is limited.

Request for dismissal or stay

The federal statute on arbitration requires the dismissal of all claims which can be resolved by arbitration. MMA argued that all four claims CN filed [see 10#10B] fit within the arbitration clause and the Court should therefore dismiss the case.

But MMA is at least entitled to a stay under the 1925 statute which requires a stay if claims are referred to arbitration. {texts of documents found on court website case 10-cv-00452}

MDOT: MOUNTAIN DIVISION

17 November, Augusta. MAINE TRACK MAINTENANCE SUBMITTED THE LOW BID to relay 4.75 miles of track from Westbrook to Windham [see 10#09A]: $2,071,092

Shaw Brothers Construction bid $2,629,243, and WJ Riegel bid $2,657,382. {Datafax Rail Project Guide 22.Nov.10}

MASSACHUSETTS

CSXT: WESTBORO**

10 November, Westboro. CSX DISCUSSED CONSTRUCTION PLANS WITH THE PLANNING BOARD this evening, for creating the bulk transload terminal CSXT operates under the name ‘Transflo’.

Danielle Spicer, a civil engineer with AMEC, an international consulting and engineering company pointed out that the new Transflo site would improve the surrounding water quality with a stormwater run off system that meets all state requirements.

CSX Director of Corporate Communications Bob Sullivan said that the Westborough facility would be the greenest of the 58 active Transflo terminals in the country. “We're reducing the greenhouse gas emissions based on new technology. (The Westborough site) will be better than the Boston site,” said Sullivan.

Schedule

CSX plans to relocate its Transflo site from Allston to Westborough in 2012. “The message I want to deliver is that CSX looks forward to working with the town over the next couple of months coming up with something that works for the town and CSX,” said Maurice O'Connell, CSX vice president of government affairs. {Kelleich Welsh in MetroWest Daily News 10.Nov.10}

In the coming weeks, the planning, police, fire and other departments will submit their comments to the Board of Selectmen. Selectmen will need to approve the site plan review before the project can go forward. Later, Transflo will seek an earth-moving permit from the Planning Board.

Also, the project will need approval from the Conservation Commission, because the rail yard is next to an environmentally sensitive piece of land: Cedar Swamp. {Priyanka Dayal in Worcester Telegram & Gazette 8.Nov.10}
NEW HAMPSHIRE

ST: BOW LIMESTONE*
7 October, Bow. THE SCRUBBER AT MERRIMACK STATION -- WHICH WILL SIGNIFICANTLY REDUCE PSNH’S MERCURY AND SULFUR EMISSIONS -- WILL BE FINISHED ONE YEAR EARLIER than required by law, and will be completed under budget. A productive workforce and favorable weather conditions have led to a savings of both time and money.

Bill Smagula, PSNH Director of Generation, said the Clean Air Project will be complete and operating by July, 2012, one year ahead of the deadline set out by the State. The price estimate of the scrubber system has been reduced to $430 million from $457 million. The savings is the result of the high productivity of the workforce, favorable weather conditions that helped avoid delays, and certain commodity cost reductions.

Use of limestone
The installation of a wet flue gas desulfurization system at Merrimack Station was mandated by the State of New Hampshire in 2006 (RSA 125-O:11) and is aimed at reducing emissions of mercury and other pollutants. The scrubber, which employs limestone, will remove more than 80% of the mercury and more than 90% of sulfur emissions from the flue gases of the coal-fired power plant. {PSNH press release}

Martin Murray, PSNH spokesperson, said the company is not yet ready to make an announcement about where the limestone will come from, nor how it will get to Bow. {e-mail to ANR&P 28.Sept.10}

RHODE ISLAND

DAVISVILLE/SEAVIEW: TRACK BID*
10 November. TRACK WORK FOR BUILDING 318 AND PIER TWO COULD COST JUST UNDER $1 MILLION [see 10#10B], according to bids this day for

Jointed rail track with concrete crossties, installing new No. 8 turnout, installing asphalt with rubber interface grade crossing surface and installing a double structural cantilever slide gate. Upgrade Pier 2 Track from east end of NORAD yard to the northern end of Pier 2. Work items include excavation, installing new jointed rail track with concrete crossties, placing bituminous concrete pavement, and raising, aligning and surface track and turnouts. Work also includes: Rail Tracks, Track Appurtenances and Accessories.

Bids
$927,850   LM Heavy Construction LLC, Westford, Massachusetts
$976,035   Frank Tartaglia Inc Syracuse, NY
$980,944   Railworks Track Services Inc, North Jackson, Ohio
{DataFax 12.Nov.10}

VERMONT

VAOT: INDUSTRIAL SIDING FUND*
8 November, Montpelier. VAOT HAS SPEEDED UP GETTING MONEY OUT TO RAIL PROJECTS under the long-existing program which pays one-third the cost of spurs for shippers. The railroad and the shipper each contribute one-third.
At the formal opening of the Shelburne Limestone transload in Burlington [see 10#10B], owner Dennis Demers noted how impressed he was that the project from inception to completion took less than a year. Of course, noted Joe Flynn, VAOT rail manager, building the project in a rail yard shielded it from some of the Vermont permitting processes. {ANR&P discussion 2.Nov.10}

The change
Trini Brassard, assistant director of operations, wrote that the program formerly would ‘require an application explaining the project, a budget, etc. VTrans would review the application and if it was funded we would request the money in the next budget cycle or though budget adjustment. Participants were able to proceed with their project, but if the funding was not approved by the legislature there was no State participation.

“We have changed the program so we have a funding allocation in the budget. To access this funding currently, [the applicants] submit the project description and budget to VTrans. We review the project, look at the benefits it will bring to the shipper/receiver and the railroad, look at employment generation, cost savings for end users of the product, environmental impacts or reduction of impacts, and then make a decision on funding.

“We have a core agreement that we complete which is signed by all three parties (VTrans, railroad and shipper/receiver). The project can move forward as soon as we approve it and issue a notice to proceed while the agreement is making its way through the various parties.

“When the project is complete the railroad or shipper/receiver submits an invoice for the entire cost of the project for which we issue payment for 1/3 of the cost up to the pre-approved amount.

“This process allows us to respond quicker to the needs and improvements which the market is demanding. For this fiscal year [FY11] we have approximately $150,000 in the rail budget. We have also committed some additional funding from cost savings elsewhere in the budget. We anticipate submitting a budget request for FY12 that has an increase in this program.’ {e-mail to ANR&P 8.Nov.10}

Projects
Some of the FY11 $150,000 is allocated to the Shelburne Limestone building. Flynn has two other projects “teed up,” he said, one on the east side and one on the west side of the state. He declined to provide further details until he is confident that the shippers involved have decided to proceed.

History
Flynn remarked that the “program is starting to become more known...Both railroads and state economic development officials know about it....I got two calls from real estate developers working on behalf of clients” who may want rail sidings. {ANR&P discussion 2.Oct.10}

But in November 1998, the program was much larger, and more well-known. The department announced 12 projects totalling $1,597 million, with four Vermont railroads [see 98#24]. Alas, by 2002 the General Assembly had zeroed the program [see 02#05A].

NECR: TRACK PROJECT BEGUN*
9 November, St.Albans. VERMONT, NECR, FRA, AND AMTRAK OFFICIALS MARKED THE $70 MILLION PROJECT TO BOOST TRACK SPEEDS on the route of the St. Albans-DC Vermonter within the Green Mountain State. Data: 141 miles of new 115-pound CWR to be installed, manufactured at Steel Dynamics, Columbia City, Indiana. Rail America is contributing $20 million, the federal government under the American Reinvestment and Recovery Act the balance [see 10#01B].

L.B.Foster will use 18 total rail trains ordered; 3 for 2010, then when weather permits, 3 a month for 5 months in 2011. Each rail train averages 80,000-84,000 linear feet of rail or 7.2-7.9 miles of installed rail (side-by-side). Weather permitting, the first 24 or so miles will be installed by Thanksgiving.

Between St. Albans and White River Junction, the line will be rated FRA class 3, as the Roxbury Subdivision lacks a signal system. From White River Junction south to Vernon, signal upgrades to the already-installed centralized traffic control system will allow FRS class 4 speeds: 79 miles per hour for passenger, 59 for freight. The
rebuilt track will handle 286,000-pound cars.

**Connecting to Massachusetts and Connecticut**

Vermont’s project is one of three different Recovery Act grants totaling $160 million that will improve the Vermonter’s route through New England. Connecticut will receive $40 million to add 10.5 miles of double track to Amtrak’s line between Springfield and New Haven, a line segment shared with other Amtrak trains. Massachusetts was awarded $70 million to reroute the Vermonter onto Pan Am’s direct line between Springfield and East Northfield, Massachusetts, a move that will shave 11 miles of the train’s route and eliminate a backup move. The work in the three states will improve the Vermonter’s time to New York by 90 minutes.

**Future Vermont work**

Future projects will likely be geared toward the procurement of funds for the restoration of the Montreal service and for Vermont’s Western Corridor project. That corridor stretches from Burlington to Albany via Rutland, Manchester, and Bennington. A $500,000 Recovery Act planning grant was received to study the first step in extending passenger service to Manchester and Bennington. That grant authorizes Vermont and New York to conduct a planning project to identify outcomes that address passenger rail service along the Western Corridor. {Kevin Burkholder as posted to the NERAIL list; Governor Jim Douglas press release}

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**VRS: ENVIRONMENTAL FINES**

3 November, Montpelier. **VRS AGREED TO FINES OF $120,000 FOR MISHANDLING HAZARDOUS WASTE:** $70,000 in civil penalties and $50,000 to fund a Supplemental Environmental Project (SEP) to settle claims that the company violated Vermont’s hazardous waste management laws.

The violations were discovered during inspections by the Agency of Natural Resources in 2008 at the company’s Burlington and Rutland rail yards, and included the failure to properly store, label and manage hazardous wastes. As part of the settlement, Vermont Railway admitted the violations and agreed to implement compliance measures to prevent hazardous material spills at its Vermont facilities.

The Pleadings by Agreement and Stipulation for Entry of Consent Order and Consent Order were filed with the Superior Court, Civil Division, Washington Unit. Judge Geoffrey W. Crawford approved the settlement on November 3. {Vermont Attorney General press release 5.Nov.10}

**Long-time waste**

Inspectors found several containers of waste stored in discarded boxcars left since the 1960s in a Rutland rail yard, according to the
state Agency of Natural Resources and Attorney General’s Office. {Dan D’Ambrosio in Burlington Free Press 16.Nov.10 - much more detail here}

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**QUEBEC/MARITIMES**

**YARMOUTH-PORTLAND: FERRY?**

15 November. **THE NOVA SCOTIA GOVERNMENT MAY BE PREPARED TO SHOULDERSOME OF THE STARTUP COSTS** for a renewed ferry service between Yarmouth and New England. Yarmouth Mayor Phil Mooney said he had a discussion with Premier Darrell Dexter on the issue on 15 November: “We asked him if there was a commitment on his government’s part to help put a ferry service in place for next year and he basically said he knows there will have to be a startup cost of some type and they will look positively on any business plan that is presented.”

Dexter’s government turned down a subsidy request in December 2009 [see 09#12B CBNS]. “They would put money in place to help for the first few years,” but after that it would have to be self-sustaining. Mooney estimated the subsidy would likely be in the range of $3 million to $5 million, similar to the subsidy amount Bay Ferries was looking for in 2010.

Mooney said he preferred a year-round service with both passenger and commercial traffic. “It is felt there is enough business to support it. Maybe not daily but maybe a two or three days a week. One group says it has a business plan that says they could do it.”

**Two bidders**

Dave Whiting, Port of Yarmouth general manager, said the port received two proposals to operate the service [see 10#10A Maritimes]. He would not reveal the companies or any proposal details but did say one company was from the US and the other from “overseas.” [According to the Portland Press Herald, one is proposing service to Portland, the other an unnamed destination.]

One proposal is for a year-round service and the other seasonal but business plan details are lacking. “In order to go forward to the province we want to be able to compare apples to apples and to do that we need some verification of numbers and operational details. We are waiting on that patiently and neither has come forward with full information although they tell us they are working on it and it is coming.”

A decision needs to be made soon for 2011 to market the service. Whiting is not sure if the government money is necessary to get the project off the ground. “Until I see some numbers I’m not sure. I have a feeling it may not be but if they are looking for that money we have to be very clear what it is for and we want to see that in the plan,” he said.

**Money amount undetermined**

Toby Koffman, spokesman for the provincial Department of Economic and Rural Development, said “when we receive a request we will respond to it. But at this point it looks like there is a lot of work left to be done before we can size up what our help might look like. The premier has described what he has seen so far as an outline rather than an actual proposal. But either way until the Yarmouth Industrial Commission comes to us with a request that’s when we will respond.” {Discussions with Tom Peters 17.Nov.10}

**Halifax a rival**

All parties agree that there's room for only one ferry service between Nova Scotia and New England. In Halifax, Scotia Cruises [see 10#10A] is using Yarmouth's latest predicament to reassure its investors that it will win out as the sole ferry operator, starting in 2012. {Tux Turkel in Portland Press Herald 20.Nov.10}
HALIFAX/CN: AUTOPORT*

10 November. CN HAS DECREASED DWELL TIME FOR EUROPEAN VEHICLE IMPORTS at its Autoport Terminal in Halifax by 25% since it implemented an integrated approach for meeting shipping demand at the terminal in spring 2010.

“Basically, CN Autoport first develops a forecast of ship arrivals a month out, as well as a current outlook on vehicles in the facility that will be ready to ship in the coming week,” CN spokesperson Mark Hallman told Automotive Logistics News. Autoport schedules the crews while CN railway operations ensure that switching of multi-level vehicle-carrying rail wagons is performed.

“At the same time CN car management flows the appropriate number of multi-levels to Halifax. We have a broadly distributed internal weekly scorecard that measures performance and communicates upcoming demand,” said Hallman. As a result average dwell times at CN Autoport in Halifax have declined to approximately 2.6 days from roughly 3.5 days earlier this year.

Ford choice

Al Dunn, purchasing manager of Ford Export & Global Growth Operations, said: “We have selected CN Autoport at Halifax to handle our new Transit Connect (compact panel van) for distribution through Canada because of the port's ideal location for reaching the Canadian market, CN's rail network throughout Canada, and Autoport's reputation for quality and its efficiency in processing vehicles.”

CN has 10 inland Autoport processing facilities in Canada which receive from Halifax. It is examining expanding yard capacity at its nearby marshalling yard at Dartmouth, Nova Scotia. {Automotive Logistics News 10-16.Nov.10}

BELLEDUNE: ARCTIC GATEWAY*

4 November. THE PORT OF BELLEDUNE CAN BENEFIT FROM INCREASED SHIPPING AND OTHER ACTIVITY IN THE NORTH, and is now marketing itself as the Arctic Gateway, said Jenna Doucet, the port’s director of marketing. “We decided to create a one-page site called ‘thearcticgateway.com’ and the reason for doing that was whenever you search for Arctic shipping on Google nothing comes up for Eastern Canada so we wanted to generate some traffic on the web site and when people search for it the Port of Belledune comes up.”

Fabrication facility

Doucet said the port offers potential for new industry. “We have 1,400 acres of vacant land around us so we have room for transshipment or storage, especially for the mining industry in the North. We are constructing a modular fabrication facility which will provide a great opportunity to build components and ship them north during the shipping season.” The port is inviting proposals to lease the fabrication facility.

Looking for shipping line

Belledune is completing a roll on/roll off barge terminal that could mesh well with the port’s plan to develop a cargo link to transport truck trailers to Argentia Newfoundland, and Labrador. “It makes a lot of sense to have a drop trailer service from Belledune to Argentia. Quite simply it would reduce traffic that goes across Newfoundland and a lot of traffic destined for Newfoundland coming from Montreal and Ontario so you would save driving on this end,” Doucet said.

Belledune officials are “speaking to a shipping line out of Ontario, but really it is now in the hands of the carrier if they have enough interest. The trucking industry seems open and think it is a good idea in terms of having short haul drivers as opposed to long haul drivers. I don’t expect it to happen overnight but the numbers do make sense to make it happen,” Doucet said.

Presently trucks and trailers access Newfoundland either by Marine Atlantic out of Sydney, or Oceanex out of Halifax and Montreal [see 10#10A].
Bulk port: gypsum down, no autos
The port moves mainly bulk, with gypsum being a major export. Doucet said the port has in past years shipped out 250,000 tonnes a year but this year only 26,000 tonnes. “The gypsum goes to Montreal to make wallboard and then to the U.S. but with the housing market the way it is, it is a direct hit on us,” she said. [Some is railed to Saint John to the wallboard plant there-see 09#01B.]

Belledune had also hoped to be an entry point into Canada and the U.S. for cars manufactured in Mexico [see 10#02A]. “The auto industry didn’t seem that receptive to it and with all the changes they are going through that project is on hold for now,” Doucet said.

Investments
Belledune has invested $67 million, infilling to reclaim 27 acres of land for one of its terminal sites, completing some crib work around the terminal, and finishing the roll on/roll off facility. All work will be complete by 31 March 2011. {Jenna Doucet in discussions with ANR&P’s Tom Peters 4.Nov.10}
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Atlantic Northeast Rails & Ports, née Maine RailWatch (1994-1997) and later Atlantic RailWatch (1998-1999), is dedicated to the preservation and extension of the regional rail network. The editor believes that publishing news on railroads and ports spotlights needed action to preserve the rail network. The publication also imbues the region with a sense of an interdependent community, employing the network to move rail and port traffic. ‘No railroad is an island, entire onto itself.’