

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<p>IN RE: RAIL FREIGHT FUEL SURCHARGE ANTITRUST LITIGATION</p>
<p>This document relates to:</p> <p>ALL DIRECT PURCHASER CASES</p>

**MDL Docket No. 1869**  
**Misc. No. 07-489 (PLF/JMF/AK)**

**ORDER**

In accordance with the accompanying memorandum opinion, the following is, hereby,

**ORDERED** Plaintiffs’ Motion to Compel Production of Documents [#340]<sup>1</sup> is

**GRANTED IN PART AND DENIED IN PART.** It is further, hereby,

**ORDERED** that BNSF produce for an *in camera* review the five AAR-related documents to which plaintiffs object to the application of the attorney-client privilege. The documents should be produced to chambers within five days of this Order. It is further, hereby,

**ORDERED** that UP produce for an *in camera* review the one document (PRIV-M-772) to which plaintiffs object to the application of the attorney-client privilege based on the subject matter (“client communication to attorney re attorney directed memorandum re telephone call with BNSF and request for attorney advice re revisions to memorandum”). The documents should be produced to chambers within five days of this Order. It is further, hereby,

**ORDERED** that plaintiffs’ motion to compel documents prepared in connection with

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<sup>1</sup> The motion to compel was filed under seal. Pursuant to the protection order in this case, plaintiffs also filed a public version of the motion. Both the sealed motion and the public version bear their own docket number. This opinion will refer to the docket number of the public filings of all documents.

STB proceedings and designated as protected by work-product privilege is **DENIED**.

Defendants will not have to produce these documents. It is further, hereby,

**ORDERED** that BNSF will produce for an *in camera* review those documents related to the STB hearings which BNSF withheld pursuant to the attorney-client privilege only, including: BNSF\_LOG0000786-787, BNSF\_LOG0000788-789, BNSF\_LOG0002184, BNSF\_LOG0002238, BNSF\_LOG0002273-274, BNSF\_LOG0010048-049, BNSF\_LOG0010071, BNSF\_LOG0010455-056, BNSF\_LOG0011328, BNSF\_LOG0011337, and BNSF\_LOG0011338. The documents should be produced to chambers within five days of this Order.

**SO ORDERED.**



Digitally signed by  
John M. Facciola  
Date: 2010.06.07  
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JOHN M. FACCIOLA  
UNITED STATES MAGISTRATE JUDGE