Cold Train owner sues BNSF Railway

Defunct service alleges railroad's poor on-time record hurt business

By DAN WHEAT
Capital Press

Dan Wheat/Capital Press
Attendees at a Cold Train open house in photograph refrigerated Cold Train containers being loaded onto a BNSF train in Quincy, Wash., June 5, 2013. Cold Train went out of business in 2014 and now its owner is suing.

SPOKANE — The owner and top official of the company that owns Cold Train, a defunct refrigerated rail service between the Pacific Northwest and Midwest, is suing BNSF Railway for $41 million or more.

The lawsuit alleges BNSF reneged on a contract to provide rail service to Cold Train, misrepresented itself in saying it would improve rail service and did so knowing a sale of the company depended on it, said Dale Foreman, a Wenatchee, Wash., attorney representing the plaintiffs, Michael Lerner and Steve Lawson.

Lerner is the owner of Overland Park, Kan.-based Rail Logistics, which owns Cold Train. Lawson is president of Rail Logistics. The lawsuit was filed on their behalf in U.S. District Court in Spokane on April 7.

A BNSF spokesman had no immediate comment.

The lawsuit seeks an amount to be proven at trial estimated to be in excess of $41 million, Foreman said. Of that, $31.7 million is for the loss of the sale of Cold Train to Federated Railways of Farmington Hills, Mich., and approximately $6 million is for Cold Train's acquisition of refrigerated rail cars to build up the business, he said.

Cold Train operated from April 2010 to August 2014 and grew to about 700 refrigerated containers per month headed east, carrying apples, produce and frozen goods. The refrigerated containers were loaded onto BNSF trains in Cold Train yards in Quincy, Wash., and Portland.

While costing more than trucking, the service steadily grew. Central Washington apple shippers liked it because their apples were getting to Midwest and East Coast destinations faster and fresher, Foreman said.

The service was 92 percent on time with 72-hour delivery from Quincy to Chicago, he said. From Illinois, service reached into 18 other states in the East and South.

Based on that service record, Lerner and Lawson bought more refrigerated containers with a goal of 1,000 per month going east, Foreman said.

"They went to all the big fruit shippers, Rainier, Stemilt, and were getting everyone on board to use the service," he said.

In August, 2013, Lerner and Lawson began looking for a capital partner to help fund the expansion of Cold Train. That resulted in a Jan. 20, 2014, agreement for Federated to buy Rail Logistics and Cold Train.

Meanwhile, BNSF's on-time delivery began dropping, first to 81 percent in September 2013 and then to 54 percent in October and 35 percent in December, according to the lawsuit.

Each month, BNSF kept assuring Lerner and Lawson that service would improve and was enthusiastic about the sale of the business to Federated, the lawsuit states.

"Our belief is the railroad was making so much money shipping shale oil out of North Dakota into Chicago that it didn't have space on the rails for Cold Train," Foreman said.

In March 2014, Lawson and Louis Ferris, president of Federated, met with BNSF in Fort Worth to discuss the future of Cold Train.

"At the meeting, BNSF continued to encourage Lawson and Lerner to proceed with the sale," the lawsuit states.

As a result, Federated "infused capital of $1.25 million into Cold Train," the lawsuit states.

By April, on-time service had dropped to 3 percent, Cold Train was losing business and Lawson repeatedly complained to BNSF, the lawsuit says.

"Fruit was late. Retailers were mad. Shippers were angry," Foreman said.

On April 24, BNSF wrote a letter to the U.S. Secretary of Transportation supporting the Port of Quincy's request for a grant to expand the rail yard serving Cold Train. The same day, BNSF informed Lawson and Lerner that 72-hour service was replaced with 125-hour service, the lawsuit states.

Lerner and Lawson met with BNSF on April 28 but BNSF declined to restore 72-hour service. Federated withdrew its offer to buy Rail Logistics and Cold Train.

Dan Wheat/Capital Press
Michael Lerner, owner of Rail Logistics and Cold Train, is shown at a Cold Train open house in Quincy, Wash., in 2013.

Dan Wheat/Capital Press
Steve Lawson, president of Rail Logistics and Cold Train, is shown at a Cold Train open house in Quincy, Wash., in 2013.

Livestock antibiotic bill divides doctors, veterinarians

Legislation takes aim at 'non-therapeutic' uses

By MATEUSZ PERKOWSKI
Capital Press

Legislation that would restrict "non-therapeutic" antibiotic use in livestock production is pitting doctors against veterinarians in Oregon.

The Oregon Medical Association and the Oregon Health & Science University recently came out in favor of Senate Bill 920, which would disallow the use of antibiotics to promote growth or prevent disease in farm animals.

The groups argue that limiting such uses is necessary to prevent resistance to antibiotics among microbial pathogens.

Brian Wong, chair of OHSU's infectious diseases division, said that treating healthy animals with antibiotics increases the danger that humans will encounter diseases that are immune to these crucial drugs.

Wong testified on behalf of OHSU and OMA during an April 6 hearing before the Senate Committee on Health Care, which is reviewing SB 920.

The Oregon Veterinary Medical Association opposes the bill because its definition of "non-therapeutic" includes antibiotic uses that are necessary to ensure herd health, such as when a disease is "expected or is in the beginning stage."

Veterinarians use antibiotics to manage populations, unlike doctors who treat individual people, according to testimony submitted by Chuck Meyer, the group's president.

The U.S. Food and Drug Administration is already reducing antibiotic use in livestock by ending treatments aimed at weight gain and feed efficiency by the end of 2016, he said.