



THE BECKHAM GROUP

TRIAL LAW

May 16, 2019

247780

The Honorable Ann D. Begeman, Chairman
The Honorable Patrick J. Fuchs, Vice-Chairman
The Honorable Martin J. Oberman, Member
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Via e-filing

ENTERED
Office of Proceedings
May 16, 2019
Part of
Public Record

Re: STB Finance Docket No. 36025; Texas Central Railroad & Infrastructure, Inc. & Texas Central Railroad, LLC – Petition to Reopen

Dear Chairman Begeman, Vice Chairman Fuchs and Member Oberman:

Along with co-counsel Richard Streeter, our law firm represents Texans Against High Speed Rail, Inc. (“TAHSR”) in the referenced proceeding. Our law firm also represents hundreds of affected landowners along the proposed high-speed rail project’s Dallas to Houston corridor.

On May 4, 2018, Petitioners Texas Central Railroad & Infrastructure, Inc. and Texas Central Railroad, LLC (“Texas Central”) filed their Petition to Reopen this proceeding. On May 31, 2018, TAHSR filed its Reply in Opposition to Petition to Reopen. I am writing to notify the Board of several recent relevant events that have occurred since May of last year.

Most notably, on May 7, 2019, a Leon County District Court issued a Final Judgment declaring that Texas Central is *not* a Railroad Company or Interurban Electric Railway under Texas law.¹ This Final Judgment emanated from hotly-contested, protracted state court litigation pending since 2016. Texas Central recently filed its Notice of Appeal of the Final Judgment.²

On May 10, 2019, just days after being made aware of the Leon County Final Judgment, an Ellis County Court abated a nearly identical lawsuit filed by Texas Central against another landowner.³ The Ellis County Court ordered the abatement because the Final Judgment (stemming from the first-filed suit in Leon County) is now on appeal to the 10th Court of Appeals in Waco, Texas (the appellate court that also presides over Ellis County). In short, the issue of whether Texas Central is a Railroad Company or Interurban Electric Railway under Texas law is

¹ *Exhibit 1.*

² *Exhibit 2.*

³ *Exhibit 3.* In the Ellis County lawsuit, filed just seven days after the Petition to Reopen, Texas Central sought a declaration that it is both a Railroad Company and Interurban Electric Railway (*i.e.*, the same issue decided by the Leon County Final Judgment). *Exhibit 4.* In January 2019, Texas Central moved for summary judgment in Ellis County, but its motion was denied soon after a hearing was held. *Exhibit 5.*

no longer being litigated in Texas trial courts. Rather, the issue will ultimately be decided by the 10th Court of Appeals or Texas Supreme Court, and will take several years to adjudicate.

As it stands, and unless and until the Final Judgment is reversed on appeal, Texas Central does not have the right to exercise eminent domain in Texas as a Railroad Company or Interurban Electric Railway. Accordingly, Texas Central may not enter onto private property to conduct surveys for the proposed project, nor may it acquire property through eminent domain.

Moreover, there continues to be substantial confusion surrounding the identity of the true moving entity(-ies) behind the proposed project.⁴ Despite the fact that Texas Central Railroad & Infrastructure, Inc. (“TCRI”) and Texas Central Railroad, LLC are the only petitioners in this proceeding, TCRI continues to represent in sworn state court pleadings that “[TCRI] and Integrated Texas Logistics, Inc. (“ITL”) plan to construct the first high-speed passenger train in the United States.”⁵ As the Board is aware, ITL is not a party to this proceeding.⁶ When asked whether ITL intends to petition the Board for approval to construct, ITL and TCRI Vice-President Travis Kelly testified, “I’m not aware.”⁷ It must also be noted that ITL did not appear as a party in *any* of the 40+ state court eminent domain cases until it sued its first landowner at 5:58 pm on May 4, 2018, a few hours after Texas Central filed its Petition to Reopen.⁸

Finally, in unsuccessful attempts to persuade Texas state courts that TCRI is a legitimate railroad with eminent domain authority, TCRI has intimated that, as a result of the Petition to Reopen, the Board’s assertion of jurisdiction over the proposed project is a foregone conclusion. Specifically, Texas Central stated in a July 2018 pleading that “we expect the STB to assert jurisdiction over the Project this summer.”⁹ When that did not happen, TCRI told another court in September and November 2018 that “we expect the STB to assert jurisdiction over the Project in the near future.”¹⁰

For these reasons, and those previously set forth in its Reply, TAHSR requests that the Board deny TCR’s Petition to Reopen and dismiss this proceeding for lack of jurisdiction.

Respectfully submitted,

/s/ Patrick McShan

Cc: All parties of record

⁴ See Delta Troy’s Reply in Opposition to Petition to Reopen, p. 14-17 (filed May 31, 2018).

⁵ See, e.g., *Exhibit 6*.

⁶ ITL is not a party to Texas Central’s alleged through-ticketing arrangement with Amtrak either.

⁷ *Exhibit 7*.

⁸ *Exhibit 8*.

⁹ *Exhibit 9*.

¹⁰ *Exhibit 10*.

Exhibit 1

LEON COUNTY, TEXAS

It is further **ORDERED, ADJUDGED AND DECREED** that Texas Central Railroad & Infrastructure, Inc. is not a Railroad Company or Interurban Electric Railway Company.

It is further **ORDERED, ADJUDGED AND DECREED** that Integrated Texas Logistics, Inc. is not a Railroad Company or Interurban Electric Railway Company,



It is further **ORDERED** that Texas Central Railroad & Infrastructure, Inc.'s claims against Plaintiff are dismissed with prejudice;

It is further **ORDERED** that Integrated Texas Logistics, Inc.'s claims against Plaintiff are dismissed with prejudice.

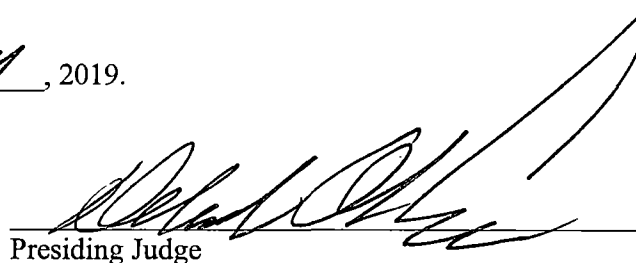
It is further **ORDERED** that, in accordance with TEX. CIV. PRAC. & REM. CODE § 37.009, Plaintiff be awarded 100,000⁰⁰ for his costs and reasonable attorney's fees incurred to date.

It is further **ORDERED** that Plaintiff be awarded conditional attorney's fees in the amount of 25,000⁰⁰ for any appeal to the Waco Court of Appeals.

It is further **ORDERED** that Plaintiff be awarded conditional attorney's fees in the amount of 15,000⁰⁰ for any appeal to the Texas Supreme Court.

All relief not granted is denied. This is a final, appealable judgment.

SIGNED this 7 day of May, 2019.


Presiding Judge

FILED
CASSANDRA NOEY, DISTRICT CLERK
LEON COUNTY, TEXAS

MAY 07 2019

BY C. Noey

Exhibit 2

CAUSE NO: 16-0137CV

JAMES FREDRICK MILES,	§	IN THE 87 th DISTRICT COURT
	§	
Plaintiff	§	
	§	
v.	§	
	§	
TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.	§	LEON COUNTY, TEXAS
	§	
Defendant	§	
	§	
and	§	
	§	
INTEGRATED TEXAS LOGISTICS, INC.,	§	
	§	
Intervenor	§	

DEFENDANT AND INTERVENOR’S JOINT NOTICE OF APPEAL

1. Defendant Texas Central Railroad & Infrastructure, Inc. and Intervenor Integrated Texas Logistics, Inc. desire to appeal from the Final Judgment signed by the Court on May 7, 2019, in *James Fredrick Miles v. Texas Central Railroad & Infrastructure, Inc.*, No. 16-0137CV.
2. Defendant Texas Central Railroad & Infrastructure, Inc. and Intervenor Integrated Texas Logistics, Inc. file this notice of appeal.
3. The appeal will be taken to the Tenth Court of Appeals.

Respectfully submitted,

/s/ Robert Neblett

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ATTORNEYS FOR TEXAS CENTRAL
RAILROAD & INFRASTRUCTURE, INC.
AND INTEGRATED TEXAS LOGISTICS,
INC.

Exhibit 3

**TEXAS CENTRAL RAILROAD &
INFRASTRUCTURE, INC., and
INTEGRATED TEXAS LOGISTICS,
INC.,**

VS.

Defendant.

ELLIS COUNTY, TEXAS

PAGE 1

Exhibit 4

CAUSE NO. 98533

TEXAS CENTRAL RAILROAD &	§	IN THE ____ TH JUDICIAL DISTRICT COURT
INFRASTRUCTURE, INC., AND	§	
INTEGRATED TEXAS LOGISTICS,	§	
INC.	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
WILLIAM H. GETZENDANER JR., as	§	
Trustee of the GETZENDANER TRUST,	§	
	§	ELLIS COUNTY, TEXAS
Defendant.		

**VERIFIED ORIGINAL PETITION AND APPLICATION FOR
INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Texas Central Railroad and Infrastructure, Inc. ("TCRI") and Integrated Texas Logistics, Inc. ("ITL") (collectively, "Plaintiffs") plan to construct the first high-speed passenger train in the United States. As railroad companies and electric railways, Plaintiffs have the absolute statutory right to examine and survey real property to determine the most advantageous route for the train, which will run between Dallas and Houston. Under the law, Plaintiffs are not required to provide notice to landowners or to seek permission for surveying. That said, Plaintiffs respect private property rights, are responsible corporate citizens, and intend to establish a good working relationship with landowners. For these reasons, TCRI has previously sought written permission from landowners before entering any property to conduct the examination and surveying activities needed to determine the most advantageous route for the train.

By refusing to grant Plaintiffs permission to enter his property, Defendant William H. Getzendaner, Jr., as Trustee of the Getzendaner Trust, ("Defendant") has denied that TCRI and ITL have the statutory right to enter his property and has refused permission to do so. At this time, TCRI

and ITL have finalized a plan to proceed with surveys and examinations along the Project route and have determined that the safest, and most prudent course of conduct is to secure a temporary injunction that can leave no doubt of their right to enter Defendant's property to conduct examinations and surveys. Additionally, as it has been disputed that Plaintiffs qualify as railroad companies and electric railways such that they have the statutory authority to exercise the rights afforded such entities, Plaintiffs further seek a declaratory judgment that they are both railroad companies, as that term is used in TEX. TRANSP. CODE § 112.051, *et. seq.*, and electric railways, as that term is defined in TEX. TRANSP. CODE § 131.011 and used in TEX. TRANSP. CODE § 131.012, *et. seq.*

Plaintiffs file this action because they have no adequate remedy at law for the relief sought. For more than 70 years, Texas courts have recognized that injunctive relief is an appropriate remedy when the right to examine and survey in advance of a project like Plaintiffs' is being denied.¹

I. DISCOVERY LEVEL

1. TCRI pleads that discovery should be conducted in accordance with a Level 3 discovery control plan, pursuant to TEX. R. CIV. P. 190.3.

II. PARTIES

2. Texas Central Railroad and Infrastructure, Inc. is a Texas Corporation licensed to do business in the State of Texas and is in the process of developing a high-speed train line between

¹ *Lewis v. Tex. Power & Light Co.*, 276 S.W.2d 950, 954 (Tex. App.—Dallas 1955 writ ref'd n.r.e.); *see also Occidental Chem. Corp. v. ETC NGL Transp., LLC*, 425 S.W.3d 354, 363 (Tex. App.—Houston [1st Dist.] 2011, pet. dismissed) (holding that "Texas courts have also recognized that injunctive relief is appropriate in this specific context, i.e., to grant relief to an entity with the right to access land to conduct preliminary survey work before instituting a condemnation proceeding.").

Plaintiffs to perform. No amount of monetary damages can cure Defendant's denial of access complained of herein. Assuming for argument's sake that monetary damages could somehow be calculated, they would be in the billions of dollars—amounts that Defendant undoubtedly could not pay.²⁰ Accordingly, Plaintiffs have no adequate remedy at law.

(iv.) **Bond.** Plaintiffs will post a reasonable bond as set by the Court in this case.

VIII. PERMANENT INJUNCTION

30. Plaintiffs further request that the Court, after trial is completed, enter a permanent injunction against Defendant and those acting in concert with him, enjoining Defendant from interfering with Plaintiffs' right to conduct the examinations and surveys necessary to select the most advantageous route for the Project.

IX. ATTORNEYS' FEES

31. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009, Plaintiffs are entitled to recover their reasonable and necessary attorneys' fees and costs associated with their declaratory judgment action.

X. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Texas Central Railroad and Infrastructure, Inc. and Integrated Texas Logistics, Inc. respectfully request the following relief:

1. A declaration that Plaintiffs are each railroad companies, as that term is defined in TEX. TRANSP. CODE § 81.002 and used in TEX. TRANSP. CODE § 112.051 *et. seq.*, and electric railways, as that term is defined in TEX. TRANSP. CODE § 131.011 and used in TEX. TRANSP.

²⁰ *Tel. Equip. Network, Inc. v. TA/Westchase Place, Ltd.*, 80 S.W.3d 601, 611 (Tex. App.—Houston [1st Dist.] 2002, no pet.)

CODE § 131.012 *et. seq.*, along with the reasonable and necessary attorneys' fees and costs incurred related to this claim;

2. That Defendant be cited to appear and show cause and that upon such hearing, a temporary injunction be issued restraining the Defendant, his agents, servants, employees, and assigns, and anyone else working in active concert or participation with him, from directly or indirectly impeding or interfering in any way with access on and across the Property by Plaintiffs or their agents, employees, operators, surveyors, and engineers for the purposes of conducting examinations and surveys of the Property in connection with the proposed high-speed train line and proposed easement and right-of-way across the Property and further restraining Defendant from removing or in any way tampering with the stakes and markers placed upon the Property by the survey crews during the pendency of this action;

3. That a permanent injunction be issued prohibiting Defendant, his agents, servants, employees, assigns, and anyone else working in active concert or participation with him, from directly or indirectly impeding or interfering in any way with access on and across the Property by Plaintiffs or their agents, employees, operators, surveyors, and engineers for the purposes of conducting examinations and surveys of the Property in connection with the proposed high-speed train line and proposed easement and right-of-way across the Property and further restraining Defendant from removing or in any way tampering with the stakes and markers placed upon the Property by the survey crews; and

4. Such other and further general relief, at law or in equity, to which Plaintiffs may be entitled.

Exhibit 5

FILED FOR RECORD
 KRYSTAL VALDEZ
 ELLIS COUNTY CLERK

CAUSE NO. 18-C-3883

TEXAS CENTRAL RAILROAD &	§	COUNTY COURT AT LAW NO. 1
INFRASTRUCTURE, INC., AND	§	
INTEGRATED TEXAS LOGISTICS,	§	
INC.	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
RONNY CALDWELL,	§	
Defendant.	§	OF ELLIS COUNTY, TEXAS

CAUSE NO. 18-C-3460

TEXAS CENTRAL RAILROAD &	§	COUNTY COURT AT LAW NO. 1
INFRASTRUCTURE, INC., AND	§	
INTEGRATED TEXAS LOGISTICS,	§	
INC.	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
WILLIAM H. GETZENDANER JR., as	§	
Trustee of the GETZENDANER TRUST,	§	
Defendant.	§	OF ELLIS COUNTY, TEXAS

CAUSE NO. 16-C-3638

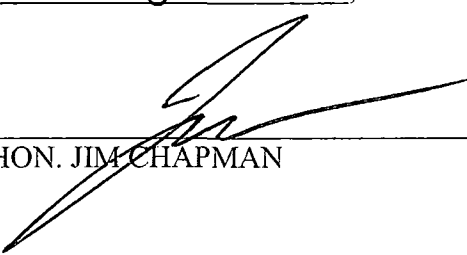
DARREN EAGLE,	§	COUNTY COURT AT LAW NO. 1
Plaintiff,	§	
	§	
v.	§	
	§	
TEXAS CENTRAL RAILROAD &	§	
INFRASTRUCTURE, INC.,	§	
Defendant,	§	
	§	
INTEGRATED TEXAS LOGISTICS,	§	
INC.,	§	OF ELLIS COUNTY, TEXAS
Intervenor.	§	

**ORDER DENYING TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.
AND TEXAS INTEGRATED LOGISTICS, INC.'S
AMENDED MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

On the 16th day of January, 2019, came on to be heard Texas Central Railroad & Infrastructure, Inc. ("TCRI") and Integrated Texas Logistics, Inc.'s ("ITL") Amended Motions for Partial Summary Judgment,¹ filed in each of the above-captioned causes. The Court, having considered the pleadings on file, the motion, response, reply, and argument of counsel, is of the opinion that there exists a fact issue precluding TCRI and ITL's Amended Motions for Partial Summary Judgment.

IT IS THEREFORE ORDERED that TCRI and ITL's Amended Motions for Partial Summary Judgment should be and hereby are in all things DENIED.

It is SO ORDERED this 28 day of Jan, 2019.



HON. JIM CHAPMAN

¹ For purposes of this Order, "Amended Motions for Partial Summary Judgment" collectively refers to the following above-captioned cases filed in the County Court at Law No. 1 of Ellis County, Texas: (1) Plaintiffs' Amended Motion for Summary Judgment, filed on November 28, 2018 in Cause No. 18-C-3883, *Texas Central Railroad & Infrastructure, Inc. and Integrated Texas Logistics, Inc. v. Ronny Caldwell*; (2) Defendant and Intervenor's Second Amended Motion for Partial Summary Judgment, filed on November 28, 2018 in Cause No. 16-C-3638, *Darren Eagle v. Texas Central Railroad & Infrastructure, Inc.*; and (3) Plaintiffs' Amended Motion for Partial Summary Judgment, filed on November 28, 2018 in Cause No. 18-C-3460, *Texas Central Railroad & Infrastructure, Inc. and Integrated Texas Logistics, Inc. v. William H. Getzendaner Jr., as Trustee of the Getzendaner Trust*.

Exhibit 6

CAUSE NO. 98668

TEXAS CENTRAL RAILROAD &	§	IN THE 40 TH JUDICIAL DISTRICT COURT
INFRASTRUCTURE, INC., AND	§	
INTEGRATED TEXAS LOGISTICS,	§	
INC.	§	
Plaintiffs,	§	
	§	
V.	§	
	§	
RONNY CALDWELL,	§	
Defendant.	§	ELLIS COUNTY, TEXAS

**VERIFIED FIRST AMENDED PETITION AND APPLICATION FOR
INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Texas Central Railroad and Infrastructure, Inc. ("TCRI") and Integrated Texas Logistics, Inc. ("ITL") (collectively, "Plaintiffs") plan to construct the first high-speed passenger train in the United States. As railroad companies and electric railways, Plaintiffs have the absolute statutory right to examine and survey real property to determine the most advantageous route for the train, which will run between Dallas and Houston. Under the law, Plaintiffs are not required to provide notice to landowners or to seek permission for surveying. That said, Plaintiffs respect private property rights, are responsible corporate citizens, and intend to establish a good working relationship with landowners. For these reasons, TCRI has previously sought written permission from landowners before entering any property to conduct the examination and surveying activities needed to determine the most advantageous route for the train.

By refusing to grant Plaintiffs permission to enter his property, Defendant Ronny Caldwell ("Defendant") has denied that TCRI and ITL have the statutory right to enter his property. At this time, TCRI and ITL have finalized a plan to proceed with surveys and examinations along the Project route and have determined that the safest, and most prudent course of conduct, is to secure a

PARCEL TX-LE-066.320**CAUSE NO: 16-0137CV**

JAMES FREDRICK MILES,	§	IN THE 87th DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.	§	LEON COUNTY, TEXAS
	§	
Defendant,	§	
	§	
and	§	
	§	
INTEGRATED TEXAS LOGISTICS, INC.,	§	
	§	
Intervenor.	§	

**DEFENDANT AND INTERVENOR’S AMENDED
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant Texas Central Railroad & Infrastructure, Inc. (“TCRI”) and Intervenor Integrated Texas Logistics, Inc. (“ITL”) file this Amended Motion for Partial Summary Judgment (“Motion”) and would respectfully show the Court as follows:

SUMMARY OF THE ARGUMENT

TCRI and ITL are Texas corporations chartered for the purpose of constructing and operating a high-speed passenger train between Houston and Dallas. These undisputed facts, along with the efforts undertaken by TCRI and ITL in preparation for constructing the passenger railway, are sufficient to deem TCRI and ITL each a “railroad company” and an “interurban electric railway company” under Texas law. This matter of statutory interpretation is ripe for determination by summary proceedings. For these reasons, as set forth in detail

PARCEL TX-LE-066.320

CAUSE NO: 16-0137CV

JAMES FREDRICK MILES,

Plaintiff

V.

**TEXAS CENTRAL RAILROAD &
INFRASTRUCTURE, INC.**

Defendant

and

**INTEGRATED TEXAS LOGISTICS,
INC.,**

Intervenor

IN THE 87th DISTRICT COURT

LEON COUNTY, TEXAS

**TCRI'S FIFTH AMENDED ANSWER, VERIFIED COUNTERCLAIM, AND
APPLICATION FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT¹**

TO THE HONORABLE JUDGE OF SAID COURT:

Texas Central Railroad and Infrastructure, Inc. (“TCRI”) and Integrated Texas Logistics, Inc.² (“ITL”) plan to construct the first high-speed passenger train in the United States. As railroad companies and electric railways, TCRI and ITL have the absolute statutory right to examine and survey real property to determine the most advantageous route for the train, which will run between

¹ On April 26, 2017, the Court entered an order abating this action until such time as TCRI made a final decision regarding the alignment of its proposed rail line. The draft environmental impact statement was released on December 8, 2017. At this time, TCRI renews its request to survey and examine Plaintiff's property, and this matter is ripe for adjudication.

² Integrated Texas Logistics, Inc. was created out of an abundance of caution after Miles alleged that TCRI did not have eminent domain powers as an electric railway. While TCRI and ITL believe this argument is without merit, as discussed in their declaratory judgment action below, ITL was created to erase any question as to ITL's authority to enter onto and survey the Property, as well as other properties related to the Project. ITL's Original Verified Petition in Intervention and Application for Injunctive Relief was filed on May 4, 2018.

CAUSE NO. 18-C-3883

TEXAS CENTRAL RAILROAD &	§	COUNTY COURT AT LAW NO. 1
INFRASTRUCTURE, INC., AND	§	
INTEGRATED TEXAS LOGISTICS,	§	
INC.	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
RONNY CALDWELL,	§	
Defendant.	§	OF ELLIS COUNTY, TEXAS

**PLAINTIFFS' AMENDED
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs Texas Central Railroad & Infrastructure, Inc. ("TCRI") and Integrated Texas Logistics, Inc. ("ITL") file this Amended Motion for Partial Summary Judgment ("Motion") and would respectfully show the Court as follows:

SUMMARY OF THE ARGUMENT

TCRI and ITL are Texas corporations chartered for the purpose of constructing and operating a high-speed passenger train between Houston and Dallas. These undisputed facts, along with the efforts undertaken by TCRI and ITL in preparation for constructing the passenger railway, are sufficient to deem TCRI and ITL each a "railroad company" and an "interurban electric railway company" under Texas law. This matter of statutory interpretation is ripe for determination by summary proceedings. For these reasons, as set forth in detail below, the Court should grant TCRI and ITL's Motion and enter an order declaring that TCRI and ITL are railroad companies and interurban electric railway companies under Texas law.

CAUSE NO. 98533

TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC., AND INTEGRATED TEXAS LOGISTICS, INC.	§	IN THE ____ TH JUDICIAL DISTRICT COURT
	§	
	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
WILLIAM H. GETZENDANER JR., as Trustee of the GETZENDANER TRUST,	§	
	§	
Defendant.	§	ELLIS COUNTY, TEXAS

**VERIFIED ORIGINAL PETITION AND APPLICATION FOR
INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Texas Central Railroad and Infrastructure, Inc. ("TCRI") and Integrated Texas Logistics, Inc. ("ITL") (collectively, "Plaintiffs") plan to construct the first high-speed passenger train in the United States. As railroad companies and electric railways, Plaintiffs have the absolute statutory right to examine and survey real property to determine the most advantageous route for the train, which will run between Dallas and Houston. Under the law, Plaintiffs are not required to provide notice to landowners or to seek permission for surveying. That said, Plaintiffs respect private property rights, are responsible corporate citizens, and intend to establish a good working relationship with landowners. For these reasons, TCRI has previously sought written permission from landowners before entering any property to conduct the examination and surveying activities needed to determine the most advantageous route for the train.

By refusing to grant Plaintiffs permission to enter his property, Defendant William H. Getzendaner, Jr., as Trustee of the Getzendaner Trust, ("Defendant") has denied that TCRI and ITL have the statutory right to enter his property and has refused permission to do so. At this time, TCRI

Exhibit 7

1 CAUSE NO. 16-0137CV
 2 JAMES FREDRICK MILES,) IN THE DISTRICT COURT
 3 Plaintiff,)
 4 vs.) 87th JUDICIAL DISTRICT
 5 TEXAS CENTRAL RAILROAD &)
 6 INFRASTRUCTURE, INC.,)
 7 Defendant,)
 8 and)
 9 INTEGRATED TEXAS)
 10 LOGISTICS, INC.,)
 11 Intervenor.) LEON COUNTY, TEXAS

12 *****

13 ORAL VIDEOTAPED DEPOSITION

14 BYRON TRAVIS KELLY

15 July 19, 2018

16 *****

17
 18
 19
 20 ORAL VIDEOTAPED DEPOSITION OF BYRON TRAVIS KELLY,
 21 produced as a witness at the instance of the Plaintiff
 22 and duly sworn, was taken in the above-styled and
 23 numbered cause on the 19th day of July, 2018, from
 24 9:17 a.m. to 2:28 p.m., before April Balcombe-Anderson,
 25 Certified Shorthand Reporter in and for the State of

1 ALSO PRESENT:

2
 3 Mr. Byron Travis Kelly,
 4 the Witness; and
 5 Ms. Katie Barnes; and
 6 Mr. Jordan Mummert,
 7 the Videographer; and
 8 Ms. April Balcombe-Anderson,
 9 the Court Reporter.
 10
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 23
 24
 25

1 Texas, reported by computerized stenotype machine at the
 2 offices of Jackson Walker, LLP, 100 Congress Avenue,
 3 Suite 1100, Barton Springs Room, Austin, Texas 78701
 4 pursuant to the Texas Rules of Civil Procedure and the
 5 provisions stated on the record or attached hereto.

6 APPEARANCES

7
 8 FOR PLAINTIFF:

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 14 Email: patrick@beckham-group.com

15 FOR DEFENDANT AND INTERVENOR:

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 19 Austin, Texas 78737
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 21 Email: mjames@jw.com

22 and

23 MR. ROBERT B. NEBLETT, III
 24 Jackson Walker, LLP
 25 2323 Ross Avenue, Suite 600
 Dallas, Texas 75201
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 Email: rneblett@jw.com

1 INDEX

2 PAGE

3	BYRON TRAVIS KELLY	
4	Examination by Mr. McShan	6
5	Signature Page	130
6	Court Reporter's Certificate	132

7 EXHIBITS

8		
9		
10	EXHIBIT DESCRIPTION PAGE	
11	Exhibit 1 Answers to Interrogatories	7
12	Exhibit 2 TCRI Amended Summary Judgment	29
13	Exhibit 3 Letter dated 12/26/12 to Texas Comptroller from TXHS Railroad	30
14	Exhibit 4 TCRI Motion for Summary Judgment	30
15	Exhibit 5 Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC Authority to Construct and Operate Petition for Exemption from 49 USC 10901 and Subtitle IV - Passenger Rail Line Between Dallas, Texas, and Houston, Texas	52
16	Exhibit 6 Fourth Amended Petition dated 5/4/2018	75
17	Exhibit 7 Fifth Amended Answer	75
18	Exhibit 8 Copy of Deposition of Kelly Travis dated 6/29/2018	71
19		
20		
21		
22		
23		
24		
25		

Page 69

1 Q. (BY MR. McSHAN) All right. Let's go back and
2 look at your declaration.

3 THE REPORTER: Was there an answer?

4 MR. JAMES: No.

5 THE REPORTER: Thanks.

6 Q. (BY MR. McSHAN) See paragraph 10 of your
7 declaration?

8 MR. JAMES: Wait just a second.

9 Section 10?

10 MR. McSHAN: Yes.

11 MR. JAMES: Okay.

12 Q. (BY MR. McSHAN) All right. You see what's
13 the -- what -- you see the -- where the final sentence,
14 it says "A true and correct copy of the application for
15 STB certification is attached hereto as Exhibit A-7."

16 Did I read that correctly?

17 **A. You did read that correctly.**

18 Q. All right. Now, let's go to Exhibit A-7, which
19 you've referred to in your declaration as the
20 "Application for STB Certification." I'm looking at
21 page 8.

22 It says: Texas Central requests that the
23 boards reopen this proceeding, assert jurisdiction over
24 the Texas Central line, and grant the exemptions
25 requested by Texas Central's exemption petition.

Page 70

1 Do you understand the exemptions that
2 Texas Central is seeking in its exemption petitions?

3 MR. JAMES: Objection. Form.

4 **A. I have a general understanding of the**
5 **exemptions.**

6 Q. (BY MR. McSHAN) What is that general
7 understanding?

8 **A. My general understanding is that there are some**
9 **regulations, some oversight, that STB is statutorily**
10 **capable of exerting over railroads but typically or**
11 **often don't do so over passenger railroads, and we are**
12 **requesting exemption from -- from some of those.**

13 **But I -- that's my understanding. I'm --**
14 **I didn't write it. I'm not a lawyer. I'm not sure.**

15 Q. And the petitioners who are seeking those
16 exemptions are TCRI and Texas Central Railroad, LLC;
17 correct?

18 **A. That is correct.**

19 Q. And those are two of the entities that are
20 going to construct and operate the high-speed train,
21 correct?

22 **A. Those are two of the entities that will --**

23 Q. And --

24 **A. -- construct and operate the railroad.**

25 Q. And the other entity is who?

Page 71

1 **A. One of the other entities is ITL.**

2 Q. Has ITL filed any petitions or sought any
3 relief from the STB?

4 **A. No.**

5 Q. Does it intend to do so?

6 **A. I'm not aware.**

7 MR. McSHAN: Let's take a break. I'm
8 going to call Jimmy and get an update on what's going
9 on.

10 MR. JAMES: It's -- this will be a good
11 use of our time. It's 11:24. You want to use this now.

12 THE VIDEOGRAPHER: The time's 11:24.
13 We're off the record.

14 (Lunch recess, 11:24 a.m. to 12:39 p.m.).

15 THE VIDEOGRAPHER: Time is 12:39. We're
16 on the record.

17 (Exhibit 8 marked).

18 Q. (BY MR. McSHAN) Mr. Kelly, I have marked for
19 you Exhibit 8, which is a copy of your deposition that
20 you gave on June 29th. I understand that since it's a
21 recent deposition, you haven't had a chance to make any
22 corrections or changes, but I'd still like to ask you a
23 couple of questions about some answers you gave on that
24 date.

25 And I've marked two pages there. You need

Page 72

1 to go to page 63, please, which is the first mark I have
2 there. It's double-sided and I've highlighted some
3 language there.

4 You will see that I asked you on page 63,
5 line 2: "Is it a true statement that ITL was created to
6 erase any question as to TCRI's ability to enter onto
7 and survey the property?"

8 And you gave an answer, and towards the
9 end of the answer, you said: "So ITL was created to
10 erase any question as to TCRI or ITL's authority to
11 enter onto and survey the property."

12 As we sit here today on July 19th, is --
13 that answer you gave, is that still an accurate answer?

14 **A. ITL was created out of an abundance of caution**
15 **because of arguments that were made as it relates to**
16 **TCRI's eminent domain authority, arguments that TCRI had**
17 **waived its authority. We disagree with those, with that**
18 **argument.**

19 **ITL was created in part to -- out of an**
20 **abundance of caution to remove any doubt as to -- or**
21 **to -- to resolve that, but also to perform specific**
22 **functions for the project related to the procurement of**
23 **rolling stock and maintenance equipment -- maintenance**
24 **of way equipment, the transport of materials to the**
25 **construction site, the storage of construction**

Exhibit 8

From: No-Reply@eFileTexas.gov
Sent: Friday, May 4, 2018 6:00 PM
To: Patrick McShan
Subject: Notification of Service for Case: 16-0137CV, MILES, JAMES FREDRICK VS. TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC. for filing Counter Claim/Cross Action/Interpleader/Intervention/Third Party, Envelope Number: 24390020



Notification of Service

Case Number: 16-0137CV
Case Style: MILES, JAMES FREDRICK VS.
TEXAS CENTRAL RAILROAD &
INFRASTRUCTURE, INC.
Envelope Number: 24390020

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	16-0137CV
Case Style	MILES, JAMES FREDRICK VS. TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.
Date/Time Submitted	5/4/2018 5:58 PM CST
Filing Type	Counter Claim/Cross Action/Interpleader/Intervention/Third Party
Filing Description	Integrated Texas Logistics, Inc.'s Verified Petition in Intervention and Application for Injunctive Relief
Filed By	Lori Kruse
Service Contacts	Other Service Contacts not associated with a party on the case: Monte James (mjames@jw.com) Susan Ayers (sayers@jw.com) Robert Neblett (rneblett@jw.com) Glenn A. Sodd (leandra@dawsonsodd.com) Richard Scott Wilson (scott@cannonandwilson.com) Blake L. Beckham (blake@beckham-group.com) Michael Patrick McShan (patrick@beckham-group.com)

	William Jason Sodd (jason@dawsonsodd.com) Robert B. Neblett (rneblett@jw.com) Joe B. Cannon (joe@cannonandwilson.com) Jody Sodd McSpadden (andrea@dawsonsodd.com) Brad Anderson (banderson@jw.com) Faith Johnson (flowry@jw.com)
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Exhibit 9

PARCEL TX-LE-066.320**CAUSE NO: 16-0137CV**

JAMES FREDRICK MILES,	§	IN THE 87th DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.	§	LEON COUNTY, TEXAS
	§	
Defendant,	§	
	§	
and	§	
	§	
INTEGRATED TEXAS LOGISTICS, INC.,	§	
	§	
Intervenor.	§	

**DEFENDANT AND INTERVENOR’S AMENDED
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant Texas Central Railroad & Infrastructure, Inc. (“TCRI”) and Intervenor Integrated Texas Logistics, Inc. (“ITL”) file this Amended Motion for Partial Summary Judgment (“Motion”) and would respectfully show the Court as follows:

SUMMARY OF THE ARGUMENT

TCRI and ITL are Texas corporations chartered for the purpose of constructing and operating a high-speed passenger train between Houston and Dallas. These undisputed facts, along with the efforts undertaken by TCRI and ITL in preparation for constructing the passenger railway, are sufficient to deem TCRI and ITL each a “railroad company” and an “interurban electric railway company” under Texas law. This matter of statutory interpretation is ripe for determination by summary proceedings. For these reasons, as set forth in detail

asserts jurisdiction over TCRI, TCRI will become subject to the exclusive and plenary jurisdiction of the STB. STB will have to authorize the Project's construction and operation.^{67,68} Importantly, TCRI is not required to be actively transporting passengers or have trains running on tracks to fall under the STB's jurisdiction. That is because the STB, like the Texas Legislature, recognizes that construction and operation of a railroad requires a wide range of antecedent activities before a single passenger rides on a train. **We expect the STB to assert jurisdiction over the Project this summer.**

f. *TCRI and ITL are conducting on-the-ground surveys and entering option agreements to purchase right-of-ways.*

TCRI and its affiliates have done more than engage regulators and retain contractors. As of the filing of this Motion, TCRI has obtained over 4,000 signed survey permission forms from landowners—many of whom are Mr. Beckham's clients—granting TCRI the right to enter the landowners property and conduct surveying activities for the purpose of constructing the railroad. *Id.* ¶ 8. Using the over 4,000 signed survey permit forms, TCRI has conducted over 2,000 surveys and examinations to ensure that the routes will support the Project. Kelly Decl. ¶¶ 6, 8, 11. Railroad companies must engage in these types of activities before they acquire right of way, build a railroad, or put a train on a track. *Id.* ¶¶ 6–12. The Texas Legislature has recognized as much, and has specifically granted railroads the power to “make an examination and survey for the company's **proposed** railway, to be performed as necessary to select the most advantageous route for the **proposed** railway”⁶⁹

Furthermore, TCRI is actively entering into voluntary option agreements to secure the right to purchase right-of-way needed to construct the railroad, and, as of the filing of this

⁶⁷ TCRI anticipates that the STB will decide whether it has jurisdiction over the Project this summer.

⁶⁸ *See id.* § 10901(a).

⁶⁹ Tex. Transp. Code § 112.051(a) (emphasis added).

Exhibit 10

CAUSE NO. 98668

TEXAS CENTRAL RAILROAD &	§	IN THE 40 TH JUDICIAL DISTRICT COURT
INFRASTRUCTURE, INC., AND	§	
INTEGRATED TEXAS LOGISTICS,	§	
INC.	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
RONNY CALDWELL,	§	
Defendant.	§	ELLIS COUNTY, TEXAS

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs Texas Central Railroad & Infrastructure, Inc. ("TCRI") and Integrated Texas Logistics, Inc. ("ITL") file this Motion for Partial Summary Judgment ("Motion") and would respectfully show the Court as follows:

SUMMARY OF THE ARGUMENT

TCRI and ITL are Texas corporations chartered for the purpose of constructing and operating a high-speed passenger train between Houston and Dallas. These undisputed facts, along with the efforts undertaken by TCRI and ITL in preparation for constructing the passenger railway, are sufficient to deem TCRI and ITL each a "railroad company" and an "interurban electric railway company" under Texas law. This matter of statutory interpretation is ripe for determination by summary proceedings. For these reasons, as set forth in detail below, the Court should grant TCRI and ITL's Motion and enter an order declaring that TCRI and ITL are railroad companies and interurban electric railway companies under Texas law.

SUMMARY JUDGMENT EVIDENCE

In support of this Motion for Summary Judgment, TCRI and ITL attach and incorporate by reference for all purposes the following summary judgment evidence:

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

nature, could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that the Board has authorized.”⁶⁹

By virtue of the Amtrak through-ticketing agreement, the Project will be part of the interstate rail network. Therefore, the Project falls under the STB’s jurisdiction. When the STB asserts jurisdiction over TCRI, TCRI will become subject to the exclusive and plenary jurisdiction of the STB. STB will have to authorize the Project’s construction and operation.⁷⁰ Importantly, TCRI is not required to be actively transporting passengers or have trains running on tracks to fall under the STB’s jurisdiction. That is because the STB, like the Texas Legislature, recognizes that construction and operation of a railroad requires a wide range of antecedent activities before a single passenger rides on a train. **We expect the STB to assert jurisdiction over the Project in the near future.**

f. TCRI and ITL are conducting on-the-ground surveys and entering option agreements to purchase right-of-ways.

TCRI and its affiliates have done more than engage regulators and retain contractors. As of the filing of this Motion, TCRI has obtained over 4,000 signed survey permission forms from landowners—many of whom are Mr. Beckham’s clients—granting TCRI the right to enter the landowners property and conduct surveying activities for the purpose of constructing the railroad. Kelly Decl. ¶ 8. Using the over 4,000 signed survey permission forms, TCRI has conducted over 2,000 surveys and examinations to ensure that the routes will support the Project. *Id.* ¶¶ 6, 8, 11. Railroad companies must engage in these types of activities before they acquire right-of-way, build a railroad, or put a train on a track. *Id.* ¶¶ 6–12. The Texas Legislature has recognized as much, and has specifically granted railroads the power to “make

⁶⁹ *Franks Inv. Co. LLC v. Union Pac. R.R. Co.*, 593 F.3d 404, 410 (5th Cir. 2010).

⁷⁰ *See id.* § 10901(a).

CAUSE NO. 18-C-3883

TEXAS CENTRAL RAILROAD &	§	COUNTY COURT AT LAW NO. 1
INFRASTRUCTURE, INC., AND	§	
INTEGRATED TEXAS LOGISTICS,	§	
INC.	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
RONNY CALDWELL,	§	
Defendant.	§	OF ELLIS COUNTY, TEXAS

**PLAINTIFFS' AMENDED
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs Texas Central Railroad & Infrastructure, Inc. ("TCRI") and Integrated Texas Logistics, Inc. ("ITL") file this Amended Motion for Partial Summary Judgment ("Motion") and would respectfully show the Court as follows:

SUMMARY OF THE ARGUMENT

TCRI and ITL are Texas corporations chartered for the purpose of constructing and operating a high-speed passenger train between Houston and Dallas. These undisputed facts, along with the efforts undertaken by TCRI and ITL in preparation for constructing the passenger railway, are sufficient to deem TCRI and ITL each a "railroad company" and an "interurban electric railway company" under Texas law. This matter of statutory interpretation is ripe for determination by summary proceedings. For these reasons, as set forth in detail below, the Court should grant TCRI and ITL's Motion and enter an order declaring that TCRI and ITL are railroad companies and interurban electric railway companies under Texas law.

rail, among other things.⁶⁶ In the ICCTA, Congress expressly provided that the STB’s authority over rail transportation is exclusive.^{67,68} Thus, when a project falls within STB jurisdiction, federal law preempts any “state or local permitting or preclearance that, by its nature, could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that the Board has authorized.”⁶⁹

By virtue of the Amtrak through-ticketing agreement, the Project will be part of the interstate rail network. Therefore, the Project falls under the STB’s jurisdiction. When the STB asserts jurisdiction over TCRI, TCRI will become subject to the jurisdiction of the STB. STB will have to authorize the Project’s construction and operation.⁷⁰ Importantly, TCRI is not required to be actively transporting passengers or have trains running on tracks to fall under the STB’s jurisdiction. That is because the STB, like the Texas Legislature, recognizes that construction and operation of a railroad requires a wide range of antecedent activities before a single passenger rides on a train. **We expect the STB to assert jurisdiction over the Project in the near future.**

6. *TCRI and ITL are conducting on-the-ground surveys and entering option agreements to purchase rights-of-way.*

TCRI and its affiliates have done more than engage regulators and retain contractors. As of the filing of this Motion, TCRI has obtained over 4,000 signed survey permission forms from landowners—many of whom are Mr. Beckham’s clients—granting TCRI the right to enter the

⁶⁶ *Id.* § 10501(b).

⁶⁷ *See, e.g., id.* (agency has exclusive jurisdiction over “transportation by rail carriers” and the “operation...of spur, industrial, team, switching, or side track, or facilities, even if the tracks are located, or intended to be located, entirely in one State.”).

⁶⁸ *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 242 (3d Cir. 2007) (recognizing that “[r]ailroading . . . is historically the subject of federal regulation.”)

⁶⁹ *Franks Inv. Co. LLC v. Union Pac. R.R. Co.*, 593 F.3d 404, 410 (5th Cir. 2010).

⁷⁰ *See id.* § 10901(a).