

CHARLES H. MONTANGE

ATTORNEY AT LAW

426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936

FAX: (206) 546-3739

1 August 2006
by Express



Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

217195

Re: PYCO Industries, Inc. -- Feeder Line Application
-- South Plains Switching, F.D. 34890; also
tendered for Finance Dockets 34802, 34889, 34870,
and 33753 (Sub-no. 1)

-217198

217194

217196 217197

Transcript of state court preliminary injunction
proceeding

Dear Secretary Williams:

On behalf of PYCO Industries, I enclose for filing the original and ten copies of the transcript of the state court preliminary injunction proceeding, which became available today (August 1), in the case brought by Choo Choo Properties, Inc., against PYCO Industries to block PYCO's use of PYCO's industrial crossing over the "wye" south of incumbent rail provider South Plains Switching's (SAW's) yard in Lubbock.

The transcript sets forth the terms of the settlement. PYCO is afforded 30 days to move its cottonseed. After 30 days, PYCO continues to be deprived of use of its crossing. The parties agreed that the settlement agreement "will not have any effect on the future legal positions of the parties as to the merits of the case...." Transcript at 6.

PYCO entered into a settlement to save its cottonseed stockpile. The settlement does not resolve other lease/license terminations by Choo Choo, nor does it resolve PYCO's access to the stockpile for the 2006 cotton rush.

ENTERED
Office of Proceedings

AUG 2 - 2006

U.S. DEPT. OF
PUBLIC RECORD

Respectfully submitted,

Charles H. Montange
for PYCO Industries, Inc.

Encl.

cc. Counsel (per certificate of service) (w/encl.)
Mr. McLaren (w/encl.)

R E P O R T E R ' S R E C O R D

VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. 2006-535,682

CHOO-CHOO PROPERTIES, INC. § IN THE DISTRICT COURT OF
 §
 § Movant(s),
v. § LUBBOCK COUNTY, TEXAS
 §
PYCO INDUSTRIES, INC. §
 §
 § Respondent(s). § 237TH JUDICIAL DISTRICT

T E M P O R A R Y I N J U N C T I O N A G R E E M E N T

On the 20th day of July, 2006, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Quay F. Parker, Judge
Presiding by Assignment, held in Lubbock, Lubbock County,
Texas:

Proceedings reported by stenographic machine
shorthand method.

ORIGINAL

A P P E A R A N C E S

ATTORNEY FOR PETITIONER:

JAMES L. GORSUCH, P.C.

Honorable James L. Gorsuch

SBOT NO. 08221250

4412 74th Street, Suite B-102

Lubbock, Texas 79424

Tel: 806.771.6474

Fax: 806.771.6476

ATTORNEY FOR RESPONDENT:

Honorable Gary R. McLaren

SBOT NO. 00791232

3305 66th, Suite 1A

Lubbock, Texas 79413

Tel: 806.788.0609

Fax: 806.785.2521

VOLUME 1 OF 1
TEMPORARY INJUNCTION AGREEMENT
THURSDAY, JULY 20, 2006, 9:45 A.M.

EVENT	PAGE	VOL
COMMENCEMENT.	04	1
AGREEMENT	04	1
ADJOURNMENT	07	1
COURT REPORTER'S CERTIFICATE.	08	1

- P R O C E E D I N G S -

(THURSDAY, JULY 20, 2006, 9:45 A.M.)

(TEMPORARY INJUNCTION AGREEMENT)

THE COURT: Deb, this is Cause No.

2006-535,682, and the style of the case is Choo-Choo Properties, Inc. versus Pyco, P-y-c-o, Industries, Inc.

We are here today on a Temporary Restraining Order and Temporary Injunction hearing. I believe that the parties have worked out the terms of their injunction, so -- Temporary Injunction. Do you want to just go ahead and dictate that into the record for me, please sir?

MR. GORSUCH: Yes, Your Honor. Thank you very much. Jim Gorsuch for Choo-Choo Properties. We have reached an agreement in connection with the application by Choo-Choo for a Temporary Injunction in this case.

The agreement is as follows: Choo-Choo Properties and SAW will allow -- and SAW is South Plains Switching Company Limited, which is not a party to this case but owns a part of the property in question. I am authorized to speak for both SAW and Choo-Choo properties.

SAW and Choo-Choo will allow Pyco to use the crossing that goes from the east to the west over the wye, w-y-e, track that is between the west Pyco plant and the east Pyco storage facility for thirty days. Pyco may use the crossing to transport cotton seed across the rail tracks

1 of SAW and Choo-Choo for thirty days. In exchange for that,
2 Pyco will pay Choo-Choo Properties, Inc. the sum of \$750 in
3 advance.

4 Also in exchange for that, Pyco will provide
5 an insurance certificate of liability naming Choo-Choo
6 properties, Inc., and South Plains Switching Company Limited
7 as an additional insured for all vehicles that will pass
8 over the crossing. The liability certificate -- insurance
9 certificate of liability and the money will be paid in
10 advance.

11 Upon the payment of the money and the
12 delivery of the certificate of insurance naming Choo-Choo
13 Properties, Inc., and South Plains Switching Company Limited
14 as additional insured of all trucks that will pass the
15 crossing, then Pyco will be able to use the crossing to
16 transport cotton seed for thirty days from that date.

17 At the end of the thirty days a Temporary
18 Injunction will go back into effect prohibiting Pyco from
19 using the crossing until either a judgment on the merits or
20 until further Order of the Court. The bond for that
21 Temporary Injunction will be \$5,000.

22 Pyco will provide South Plains Switching
23 Company Limited and Choo-Choo Properties, Inc., a
24 hold-harmless agreement agreeing to indemnify -- where Pyco
25 will indemnify South Plains Switching Company Limited and

1 Choo-Choo Properties, Inc., from any and all liability --
2 from any and all claims from a third-party, any damage that
3 any third-party will suffer as a result of any of the
4 actions of Pyco Industries, Inc. The hold-harmless
5 agreement will be delivered within two weeks from today.

6 The parties will also agree that this
7 agreement will not have any effect on the future legal
8 positions of the parties as to the merits of the case, and
9 specifically as to whether or not Pyco has the right to use
10 the crossing, and any claims of Pyco with regard to the
11 crossing, and any claims of Choo-Choo Properties or South
12 Plains Switching in connection with that property.

13 MR. McLAREN: Gary McLaren, on behalf of Pyco
14 Industries, Inc. And that the agreement shall not be
15 considered or construed as an admission of liability or
16 guilt by any of the parties involved, Pyco Industries, Inc.,
17 Choo-Choo Properties, Inc., or South Plains Switching
18 Limited.

19 And further, that the certificate of
20 additional insured shall expire, insuring Choo-Choo
21 Properties, Inc., and South Plains Switching Limited, Inc.,
22 that that certificate of insurance shall expire upon the
23 conclusion of the thirty-day period.

24 MR. GORSUCH: And on behalf of Choo-Choo
25 Properties, Inc., and South Plains Switching Company, I

1 would agree that the insurance certificate shall only go for
2 thirty days and shall expire upon the end of thirty days.

3 MR. McLAREN: And Pyco Industries otherwise
4 agrees with the agreement as dictated by Mr. Gorsuch and
5 myself.

6 THE COURT: All right. Very good. Thank you
7 gentlemen. The court will approve the agreement.

8 And I'm leaving at noon, but -- I think this
9 is Judge Medina's case, is that right? So he could just
10 sign the Temporary Injunction --

11 MR. GORSUCH: We don't need it for thirty
12 days.

13 THE COURT: All right.

14 (ADJOURNMENT AT 10:05 A.M.)
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF TEXAS §
2 COUNTY OF LUBBOCK § REPORTER'S CERTIFICATE

3 I, Debi Pettiet, Official Court Reporter in and
4 for the 99th Judicial District Court of Lubbock County,
5 Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all portions of
7 evidence and other proceeding requested in writing by
8 counsel for the parties to be included in this volume of the
9 Reporter's Record, in the above-styled and numbered cause,
10 all of which occurred in open court or in chambers and were
11 reported by me.

12 I further certify that this Reporter's Record of
13 the proceedings truly and correctly reflects the exhibits,
14 if any, admitted by the respective parties.

15 I further certify that the total cost for the
16 preparation of the Reporter's Record is \$42.00 and was paid
17 by Mr. Gary R. McLaren, Attorney for Respondent, Pyco
18 Industries, Inc.

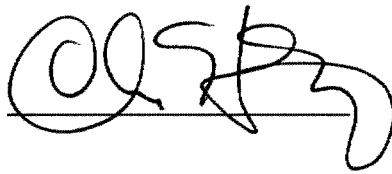
19 WITNESS MY OFFICIAL HAND on this the 1st day of
20 August, 2006.

21 
22 Debi Pettiet, Texas CSR 1969
23 Expiration Date: 12/31/06
24 Official Court Reporter, 99th District Court
25 Lubbock County, Texas
P.O. Box 10536, Rm. 316
Lubbock, Tx 79408
806.775.1037

Certificate of Service

I hereby certify service of the forgoing upon the following counsel of record either by fax transmission on 2 August 06 accompanied by deposit for express (next day) delivery on that date, or by deposit for express (next day) delivery to their address of record on 1 August 06:

Thomas McFarland (for SAW)
Adrian Steel (for BNSF)
John Heffner (for WTL)
William Mullins (for KJRY)
William Sippel (for USRP)

A handwritten signature in black ink, appearing to be "O. S. P.", written over a horizontal line.