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JUL 5 2005
RECEIVED
Richard R. Wilson
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June 29, 2005

Re: STB Docket No. AB556- Railroad Ventures, Inc. – Abandonment Between
Youngstown, OH and Darlington, PA in Mahoning and Columbiana Counties, OH and
Beaver County, PA

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JUL 5 - 2005

Part of
Public Record

Dear Sir:

Enclosed for filing please find the original and ten copies of the Reply of Railroad Ventures, Inc. to the Verified Petition of Columbiana County Port Authority for Declaratory Order filed June 15, 2005. Please time stamp a copy of this letter as proof of filing and return it to the undersigned in the enclosed self addressed, stamped envelope provided. Copies of this Reply have been served on all parties of record.

RVI also wishes to take the opportunity afforded by this filing to respectfully request that the Board expeditiously render a decision on the \$217,282 refund of RVI's escrow account monies which is currently pending in this proceeding. RVI appreciates the Board's consideration of this request.

Very truly yours,

VUONO & GRAY, LLC



Richard R. Wilson, Esq.
Attorney for Railroad Ventures, Inc.

RRW/bab

Enclosure

xc: All Parties of Record
Railroad Ventures, Inc.

Before the
SURFACE TRANSPORTATION BOARD



DOCKET NO: AB 556 (Sub No. 2X)

RAILROAD VENTURES, INC. – ABANDONMENT EXEMPTION –
BETWEEN YOUNGSTOWN, OH AND DARLINGTON, PA,
IN MAHONING AND COLUMBIANA COUNTIES, OH
AND BEAVER COUNTY, PA

**REPLY OF RAILROAD VENTURES, INC. TO
THE VERIFIED PETITION OF COLUMBIANA COUNTY
PORT AUTHORITY FOR DECLARATORY ORDER**

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Public Record

RICHARD R. WILSON, ESQ.
Attorney for Railroad Ventures, Inc.
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Dated: June 29, 2005

Before the
SURFACE TRANSPORTATION BOARD

DOCKET NO: AB 556 (Sub No. 2X)

RAILROAD VENTURES, INC. – ABANDONMENT EXEMPTION –
BETWEEN YOUNGSTOWN, OH AND DARLINGTON, PA,
IN MAHONING AND COLUMBIANA COUNTIES, OH
AND BEAVER COUNTY, PA

**REPLY OF RAILROAD VENTURES, INC. TO
THE VERIFIED PETITION OF COLUMBIANA COUNTY
PORT AUTHORITY FOR DECLARATORY ORDER**

Railroad Ventures, Inc. (“RVI”) hereby replies to the Petition of Columbiana County Port Authority (“CCPA”) for Declaratory Order filed with the Surface Transportation Board on June 15, 2005 and for the reasons set forth herein respectfully requests that the Board deny the CCPA Petition in part, at this time.

CCPA raises two separate issues in its June 15, 2005 petition. The first issue involves a request by the CCPA for the Board to invalidate and remove a lien by Kovalchick Corporation on the right of way of the former Youngstown & Southern Railway Company. Until this matter was brought to the attention of RVI by counsel for CCPA, RVI was unaware of the existence of this lien. Kovalchick Corporation has released RVI from any and all obligations arising out of Kovalchick Corporation’s involvement in the Y&S rail line transaction. Accordingly, RVI has no interest in or position with respect to the Kovalchick lien. As prior decisions in this proceeding have indicated, the Board may take such action as it deems appropriate to eliminate encumbrances from the railroad right of way only if those encumbrances impair CCPA’s ability to comply with its common carrier obligations as the owner of this railroad right of way.

Second, the Port Authority has requested that the Board review and interpret provisions of a private easement agreement which was one of the 156 easement agreements retained by RVI based on their exclusion from the OFA transaction by the valuation evidence submitted by CCPA's appraiser in the OFA phase of this proceeding. Under the Board's orders and decisions in this proceeding, CCPA took title to the railroad line subject to these 156 agreements. As indicated in the CCPA's petition, the dispute regarding this easement has already been raised by RVI before the Common Pleas Court of Mahoning County, Ohio. Thus, CCPA's Petition for Declaratory Order with respect to the dispute over this easement agreement is a collateral attack on the jurisdiction of the Common Pleas Court of Mahoning County, Ohio.

The preferred course of action would be for CCPA to proceed before the Common Pleas Court of Mahoning County and present the arguments made in the CCPA petition for consideration by the Court. CCPA appears to argue that because CCPA's appraisers used a capitalized discounted cash flow calculation to value the 156 occupancy agreements excluded from the line sale and retained by RVI, RVI's interest in the disputed easement is limited to the income generated by that occupancy. However, the rights and interests retained by RVI in the disputed easement must ultimately be judicially determined in accordance with the terms and conditions of the easement agreement under Ohio law, not the valuation methodology used by CCPA's appraiser in the OFA proceeding. In any event, if CCPA believes its contentions have merit, they should first be presented to the Ohio court. If the court determines that resolution of the dispute before it requires the regulatory expertise of the Board, it can refer specific regulatory issues to the Board.

In this context, it is well-established that state laws which do not impose unreasonable burdens on common carrier rail operations are not preempted. State of Texas DOT – Petition for Declaratory Order – Highway Construction in Tarrant County. Finance Docket 32589, 1995

ICC Lexis 14 (1995). Moreover, STB jurisdiction cannot be used to shield a carrier from a legitimate process of state law. Modern Handcraft, Inc. 363 ICC 969, 972 (1981). CCPA does not assert or nor does it offer any evidence to establish that the dispute which has arisen regarding this easement unreasonably interferes with or burdens present or future rail operations. Nor did the Board find it necessary to interpret or construe the terms of any of the easement agreements to which this rail line is subject as part of its regulation of the OFA proceeding. Indeed, the dispute centers on the scope of authority provided by the terms of the easement agreement and which party is entitled to past and future economic benefits of the third party occupancy. This is a matter of state contract and property law which lies solely within the jurisdiction of Ohio courts.

The Board, and the Commission before it, has long maintained that it has no special expertise with respect to matters of deed and contract interpretation and accordingly those matters are to be decided by courts of competent jurisdiction. See Central Illinois Railroad Company – Operation Exemption – Rail Line of the City of Peoria, et al. – Petition for Declaratory Order, STB Finance Docket No. 34518, and No. 34636, 2005 STB Lexis 113 (February 23, 2005); Ohio Valley Railroad Company – Petition to Restore Switch Connection and Other Relief, STB Finance Docket No. 34608, 2005 STB Lexis 117 (February 23, 2005); The Township of Woodbridge, NJ, et al. v. Consolidated Rail Corporation, STB Docket No. 42053, 2001 STB Lexis 299 (March 22, 2001); CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail, Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (Sub. No. 91) 2001 STB Lexis 67 *45 (February 1, 2001); Kansas City Terminal Railway Company and the Atchison Topeka and Santa Fe Railway Company – Contract to Operate Exemption – in Kansas City, MO, STB Finance Docket No. 32896, Slip Op. at 3-4 (November

20, 1996). The Board has often directed that when disputes of this nature arise, the most appropriate course of action is to direct the parties to state court to get the underlying property or contract law issues resolved. Hayfield N.R.R. v. Chicago and N.W. Transportation, 467 U.S. 622, 634 (1984). See also, Kansas City Pub. Ser. Frgt. Operation – Exempt – Abandonment 7 ICC 2d 216, 225-226 (1990) (issues of real property rights are within exclusive jurisdiction of the state) cited in Central Kansas Railway Limited Liability Company – Abandonment Exemption – in Marion and McPherson Counties, KS, STB Docket No. AB406 (Sub. No. 6X) decided May 3, 2001. In light of these well-established principals of administrative deference to state courts in matters involving state contract and property law, there is no basis for federal preemption of the state court action initiated by RVI in Mahoning County Common Pleas Court, because the dispute does not involve any actual or unreasonable interference with CCPA's common carrier rail operations arising from the third party occupancy encompassed by the easement agreement.

Furthermore, in this case there is no conflict between the state court's jurisdiction over the easement with respect to third party use of rail property and the regulatory jurisdiction of the Surface Transportation Board with respect to CCPA's common carrier rail operations and facilities. The third party occupant has used its occupancy rights under the easement for many years without any interference with railroad operations and CCPA now only contends that it, and not RVI, is entitled to the proceeds of renewal rights under this easement. This is a standard civil dispute between RVI and CCPA raising questions of interpretation of the easement terms under state property and contract law that do not implicate substantial rail regulatory issues. Under Ohio law, an Ohio court may consider all the facts and circumstances pertaining to the matter in dispute to determine the intent of the parties under the easement agreement and to address the interests of CCPA as the subservient estate owner. An Ohio court is better able than is the Board

to build a record and address the detailed factual and legal issues of Ohio contract and property law which underlie the respective rights and obligations of the parties to the easement. Moreover, an Ohio Court can better fashion an appropriate resolution of this dispute which avoids unreasonable interference with any rail operations with the aid of any advisory ruling which the Board may be asked to provide. By proceeding in this fashion, the Board can accommodate and integrate its regulatory jurisdiction with state judicial decision making without infringing on the jurisdiction of Ohio courts over state contract and property law. Moreover, were the Board to grant CCPA's petition as to this disputed easement, should it not also consider disputes related to the other 155 agreements or all rail right of way occupancy agreements? Certainly there is no reason for the Board to create a federal administrative property law applicable solely to common carrier railroad rights of way.

In conclusion, RVI takes no position on CCPA's petition regarding the Kovalchick lein. However, RVI respectfully requests that the STB dismiss the easement interpretation issue raised in the CCPA petition for declaratory order without prejudice to any party before the Mahoning County Common Pleas Court to seek leave of court to obtain an advisory ruling from the Surface Transportation Board in the event that a substantial rail regulatory issue arises during the proceeding pending before that court.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 
Richard R. Wilson, Esq.
Attorney for Railroad Ventures, Inc.

VERIFICATION

I, David Handel, verify under penalty of perjury state that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing Verified Statement.

Executed on June 27, 2005.



David Handel

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2005, a copy of the Reply of Railroad Ventures, Inc. to the Verified Petition of Columbiana County Port Authority for Declaratory Order was served by first-class U. S. Mail, postage prepaid, upon the following:

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