

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Alloy Property Company, LLC – Adverse
Abandonment – Chicago Terminal Railroad in
Chicago, IL

STB Docket No. AB-1258

CHICAGO TERMINAL RAILROAD COMPANY'S MOTION TO COMPEL

PUBLIC RECORD

Submitted by

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Dated: September 18, 2017

Motion to Compel

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I. INTRODUCTION

Chicago Terminal Railroad Company (“CTR”) hereby moves the Board pursuant to 49 C.F.R. § 1114.31 to compel Alloy Property Company, LLC (“Alloy”) to remove all objections, answer interrogatories, and produce all responsive documents (as applicable) to CTR’s First Set of Interrogatories, Requests for Production of Documents and Requests to Admit (“Requests”) served on Alloy on August 18, 2017. To the extent that CTR and Alloy cannot resolve these matters voluntarily, CTR asks the Board to appoint an administrative law judge or other appropriate official to resolve these discovery disputes.

II. BACKGROUND

This motion concerns a proceeding initiated by Alloy on June 1, 2017, whereby it sought waivers of certain abandonment regulations in anticipation of filing an application for adverse abandonment against a line of railroad in Chicago, Illinois over which CTR has Board-authorized common carrier by rail operating rights (the “Line”). On August 16, 2017, the Board granted most of the waiver requests sought by Alloy, many of which were unopposed by CTR.

Since filing its Petition for Partial Waiver of Abandonment Regulations and for Exemption, Alloy has served on CTR not just one but two sets of discovery requests.¹ CTR has responded to requests to admit, answered interrogatories, and produced numerous documents. In contrast to CTR's cooperation, Alloy has produced only one single document, and is refusing to provide meaningful responses to CTR's other discovery requests. CTR regrettably has no option but to bring the instant motion.²

III. ARGUMENT

1. Standard for Relief

The Board's Rules of Practice generally provide that a motion to compel will be granted when the information sought is either relevant *or likely to lead to the production of relevant evidence*. See 49 C.F.R. § 1114.21. "The requirement of relevance means that the information might be able to affect the outcome of a proceeding." *Waterloo Ry.—Adverse Aban.—Lines of Bangor & Aroostook R.R. & Van Buren Bridge Co. in Aroostook Cnty., Me.*, Docket No. AB 124 (Sub-No. 2), et al. (STB served Nov. 14, 2003). The documents and responses that CTR expects to obtain through its Requests are relevant because they will go to the heart of the abandonment issue, which is "whether there is a present or future public need for rail service over the line and whether that need

¹ On June 30, 2017, Alloy served on CTR: "ALLOY PROPERTY COMPANY, LLC'S FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS"; On August 9, 2017, ALLOY SERVED ON CTR: "ALLOY PROPERTY COMPANY, LLC'S SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION".

² A copy of "ALLOY PROPERTY COMPANY, LLC'S RESPONSES TO CHICAGO TERMINAL RAILROAD COMPANY'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS TO ADMIT" is attached hereto and incorporated herein as "Exhibit A".

is outweighed by other interests.” *City of Chicago, IL – Adverse Abandonment –Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010).

2. Requests pertaining to Sterling Bay’s development plans on and near the Line are relevant to whether there is a present or future public need for rail service

The Requests submitted by CTR to Alloy seek information that will reveal whether CTR’s railroad operations along the Line can coexist with, and/or be bolstered by the property development plans of Alloy and its parent company, Sterling Bay. While Alloy may be the owner of just the former Finkl Steel site where CTR has easement and operating rights, Sterling Bay has reportedly purchased many other sites along or near the Line that could present substantial rail service opportunities for CTR and, therefore, go to whether there is a “present or future public need for rail service.”³ *City of Chicago, IL – Adverse Abandonment –Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Furthermore, Alloy claimed in its Petition for Partial Waiver of Abandonment Regulations and for Exemption that its redevelopment plans are “consistent with the [City of Chicago’s] planning and zoning policies and guidelines.” Accordingly, CTR, and the Board, need to know what the specifics of those redevelopment plans are to be able to address whether “the present or future public

³ See “*Chicago developer aims at Amazon with \$10B vision for former steel plant site,*” Chicago Tribune, September 13, 2017 (reporting that Sterling Bay’s managing principal, Andy Gloor said: “Sterling Bay owns or has contracts to buy more than 70 acres now, and hopes to expand the total site to 90 or 100 acres through additional acquisitions”).

convenience and necessity require or permit the abandonment or discontinuance”. 49 U.S.C. § 10501(b)

For example, in its Response to CTR’s Request for Admission 1, Alloy argues that, “The details of any plans to develop the Land are irrelevant to the issues before the Board and are not a proper subject of discovery.” *See, **Exhibit A.*** However, the future of “the Land,” which CTR defines as “any land that [Alloy or Sterling Bay] have purchased, or have under contract to purchase, that falls within a 2-mile radius of any portion of the Line” directly correlates with whether there is a future need for rail service along the Line, including that which would involve transloading.

Similarly, the contracts that Sterling Bay has in place with other developers and tenants regarding future occupation of the land surrounding the Line are relevant to what kind of future rail service opportunities exist. Given the “strong federal policy in favor of retaining rail property in the national rail network,” CTR’s requests are not only relevant, but essential to the Board’s weighing of the issues in this proceeding. *See, 14500 Limited LLC—Petition for Declaratory Order*, STB Docket No. FD-35788, at 5 (served June 5, 2014). The Board should, therefore, compel Alloy to produce the information sought by CTR that pertain to Alloy’s and Sterling Bay’s development plans of the area surrounding the Line.

3. **Requests pertaining to Sterling Bay’s attempts to acquire property from CTR’s existing customers, as well as Sterling Bay’s agreements with new occupants of land near the Line, are relevant to whether there is a present or future public need for rail service**

In Interrogatory 7, CTR requested Alloy to “Identify all parties to whom you have submitted offers or proposals to purchase, lease, rent, or otherwise occupy the land”. *See,*

Exhibit A. Alloy answered this interrogatory by directing CTR to a previous answer, which was:

Alloy objects to this Interrogatory because it seeks information that is irrelevant to the question at issue in this proceeding: "whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests." *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Whether or not any parties have offered to purchase, lease, rent, or otherwise occupy any part of the Land is irrelevant to the issues before the Board and is not a proper subject of discovery."

See, Exhibit A. The Board should compel Alloy to answer this interrogatory because there are unconfirmed reports that Sterling Bay has acquired the properties of CTR's customers, such as Sipi Metals, Big Bay Lumber, and General Iron. Whether CTR's customers' properties have been purchased, or are in the process of being purchased, and whether those properties will be occupied by other potential customers is relevant to whether there is a future need for rail service.

4.

weighing the competing interests at hand. *See, City of Chicago, IL – Adverse Abandonment –Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010) (holding that the Board, in an abandonment proceeding, must weigh the need for present and future rail service against other interests). [REDACTED]

[REDACTED] Such documents are also relevant to CTR's ability to respond to Alloy's anticipated argument that there has been a lack of freight operations over the last two years.⁵

CTR will further contend that not only did the thrice-vandalized railroad bridge across the Chicago River inhibit freight operations over the last two years, but so did the illegal erecting of fences by Burgoyne, LLC over CTR's railroad track. It is apparent that Sterling Bay has been in communication with the law firm representing Burgoyne, LLC; and it is plausible that Sterling Bay has been colluding with Burgoyne, LLC to improperly and/or illegally inhibit railroad operations. CTR's requests of the communications between Alloy/Sterling Bay and the law firm of Bellas & Wachowski is therefore relevant to CTR's public policy arguments, as discussed above. Accordingly, the Board should compel Alloy to produce those non-privileged communications.

[REDACTED]

⁵ Alloy makes this argument in its Petition for Partial Waiver of Abandonment Regulations and for Exemption, filed on June 1, 2017.

IV. CONCLUSION

For the reasons stated above, the Board should issue an Order overruling Alloy's objections and compel Alloy to respond in full to CTR's Requests. To the extent that CTR and Alloy cannot resolve these matters voluntarily, CTR asks the Board to appoint an administrative law judge or other appropriate official to resolve these discovery disputes. Finally, to the extent any potentially responsive documents contain confidential or proprietary information; there is already a protective order in place in this matter.

Respectfully submitted,

/s/ John D. Heffner and DM

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Dated: September 18, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2017, I caused Chicago Terminal Railroad Company's Motion to Compel to be served by electronic mail on the following counsel for Alloy Property Company, LLC:

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/s/ David Michaud
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EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Alloy Property Company, LLC – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL	STB Docket No. AB-1258
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**ALLOY PROPERTY COMPANY, LLC’S RESPONSES TO CHICAGO
TERMINAL RAILROAD COMPANY’S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS TO
ADMIT**

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, Alloy Property Company, LLC (“Alloy”), through undersigned counsel, responds as follows to Chicago Terminal Railroad Company’s (“CTR’s”) First Set of Interrogatories, Requests for Production of Documents and Requests to Admit (the “Discovery Requests”).

I. DISCOVERY REQUESTS

A. Requests For Admission

Request for Admission 1. Admit that you have alternative plans to develop the Land without the abandonment of the Line.

Response: Alloy objects to this Request for Admission because it seeks information that is irrelevant to the question at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). The details of any plans that Alloy may have to

develop the Land are irrelevant to the issues before the Board and are not a proper subject of discovery.

B. Interrogatories

Interrogatory 1. Identify the “vacant, former industrial property in the North Branch area of Chicago” that you state you “recently purchased” on page 2 of the Alloy petition.

Response: The property referenced on page 2 of the Alloy petition are the former A. Finkl & Sons, Lakin General and Sims Metal Management properties located in Lincoln Park, along the North Branch of the Chicago River in Chicago, IL.

Interrogatory 2. Identify all Land as defined in Definition 9 of these Discovery Requests.

Response: Alloy objects to this Interrogatory because it seeks information that is irrelevant to the question at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Alloy’s ownership of property in the vicinity of the Line is irrelevant to the issues before the Board and is not a proper subject of discovery. Alloy further objects to this Interrogatory as overbroad in that it not only requests identification of land owned by Alloy that is crossed by the Line, but also any land located within a 2-mile radius of any portion of the Line. Subject to and without waiving these specific objections, Alloy responds that it owns the following property that is crossed by or adjacent to the Line: the former A. Finkl & Sons, Lakin General and Sims

Metal Management properties described above. Alloy will not identify any ownership interest that it may have in land that may be within a two-mile radius of the Line but is not directly on the Line, because any such ownership interests are completely irrelevant to the issues in this proceeding.

Interrogatory 3. Identify any land that is the subject of an oral or written offer to purchase made by you that falls within a 2-mile radius of any portion of the Line.

Response: Alloy objects to this Interrogatory because it seeks information that is irrelevant to the question at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Any hypothetical offers to purchase property in the vicinity of the Line are irrelevant to the issues before the Board and are not a proper subject of discovery.

Interrogatory 4. Identify all evidence supporting your assertion at page 2 of the Alloy Petition that the Line “significantly constrains Alloy’s ability to redevelop its vacant property in a manner consistent with the City’s planning and zoning policies and guidelines.”

Response: Alloy objects to this Interrogatory as unduly burdensome in that it asks Alloy to provide documents relating to publicly available data and information that CTR can access readily. *See Duke Energy v. Norfolk S. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”). Subject to and without waiving these objections, Alloy states that the

presence of a rail line self-evidently constrains Alloy's ability to develop its property consistent with the City's vision for the land along the North Branch of the Chicago River set forth in the Chicago Plan Commission's North Branch Framework Plan, which includes public access to the riverfront and a bicycle and pedestrian bridge and trail at or near the location of the Line.

Interrogatory 5. To the extent not previously identified, identify all parties, and the nature of their business, who have entered into a written contract with you to purchase, lease, rent, or otherwise occupy any part of the Land.

Response: Alloy objects to this Interrogatory because it seeks information that is irrelevant to the question at issue in this proceeding: "whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests." *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Whether or not any parties have contracted to purchase, lease, rent, or otherwise occupy any part of the Land is irrelevant to the issues before the Board and is not a proper subject of discovery.

Interrogatory 6. To the extent not previously identified, identify all parties, and the nature of their business, who have submitted offers or proposals to you to purchase, lease, rent, or otherwise occupy the Land.

Response: Alloy objects to this Interrogatory because it seeks information that is irrelevant to the question at issue in this proceeding: "whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests." *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Whether or not any parties have offered to purchase, lease, rent, or

otherwise occupy any part of the Land is irrelevant to the issues before the Board and is not a proper subject of discovery.

Interrogatory 7. To the extent not previously identified, identify all parties to whom you have submitted offers or proposals to purchase, lease, rent, or otherwise occupy the Land.

Response: Alloy objects to this Interrogatory for the reasons set forth in Interrogatory 6.

Interrogatory 8. Identify all parties that have conducted an inspection or appraisal of any portion of the Line on your behalf; and the dates of same.

Response: Alloy objects to this Interrogatory because it seeks information that is irrelevant to the question at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Alloy further objects to the extent that this Interrogatory reaches information protected by the work product privilege.

Interrogatory 9. Identify all representatives of General Iron Industries with whom you have had email communications relating or referring to CTR or the Line.

Response: Alloy has had no email communication with any General Iron Industries representatives relating or referring to CTR or the Line.

Interrogatory 10. Identify all representatives of Sipi Metals Corporation with whom you have had email communications relating or referring to CTR or the Line.

Response: Alloy will produce business records from which the answer to this interrogatory may be derived. *See* 49 C.F.R. § 1114.26.

Interrogatory 11. Identify all representatives of Big Bay Lumber with whom you have had email communications referring or relating to CTR or the Line.

Response: Alloy objects to this Interrogatory as irrelevant because Big Bay Lumber ceased operations in 2015. Subject to and without waiving this objection, Alloy responds that it has had no email communication with any Big Bay Lumber representatives relating or referring to CTR or the Line.

B. Requests for Production

Request for Production 1. Produce all Documents identified or referenced in your responses to CTR's Interrogatories, and all Documents you reviewed, consulted, considered, or relied upon in developing or preparing those responses.

Response: Alloy hereby incorporates its specific objections to the Interrogatories 1 through 11. Subject to and without waiving these objections, Alloy responds that it will produce non-privileged, responsive documents in its possession, to the extent they exist and can be located in a reasonable search.

Request for Production 2. Produce all drawings, maps, and plans that pertain to your development of the "vacant property" that you describe on page 2 of the Alloy Petition.

Response: Alloy objects to this Request because it seeks information that is irrelevant to the question at issue in this proceeding: "whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests." *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010).

Whether or not Alloy has developed any drawings, maps, or plans pertaining to the development of property in the area is irrelevant to the issues before the Board and is not a proper subject of discovery.

Request for Production 3. Produce all drawings, maps, and plans that relate to your development of the Land under a scenario where the Line has become abandoned.

Response: Alloy objects to this Request for the reasons set forth in its objections to Request for Production 2.

Request for Production 4. Produce all drawings, maps, and plans that relate to your development of the Land under a scenario where the Line has not become abandoned.

Response: Alloy objects to this Request for the reasons set forth in its objections to Request for Production 2

Request for Production 5. Produce all written communications you have had with representatives of General Iron Industries that relate to CTR or the Line.

Response: Alloy has had no written communication with any General Iron Industries representatives relating or referring to CTR or the Line.

Request for Production 6. Produce all written communications you have had with representatives of Sipi Metals Corporation that relate to CTR or the Line.

Response: Alloy is producing any written communications it had with Sipi Metals Corporation representatives relating or referring to CTR or the Line.

Request for Production 7. Produce all written communications you have had with representatives of Big Bay Lumber that relate to CTR or the Line.

Response: Alloy objects to this Request for Production as irrelevant because Big Bay Lumber ceased operations in 2015. Subject to and without waiving this objection, Alloy responds that it has had no written communication with any Big Bay Lumber representatives relating or referring to CTR or the Line.

Request for Production 8. Produce all written communications that relate to CTR or the Line that you have had with representatives of Bellas &

Wachowski, the law firm that is representing Burgoyne, LLC in the matter styled *Burgoyne, LLC v. Chicago Term. R.R. Co.*, No. 2017 CH 06199 (Circuit Court of Cook County, Illinois) (filed May 8, 2017).

Response: Alloy objects to this Interrogatory because it seeks information that is irrelevant to the question at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Whether or not Alloy has had any communications with a law firm representing a party that is not a rail shipper on the Line is irrelevant to the issues before the Board and is not a proper subject of discovery. Subject to and without waiving this objection, Alloy states that no such written communications exist.

Request for Production 9. Produce all written communications that you have had with representatives of Burgoyne, LLC that relate to CTR or the Line.

Response: Alloy objects to this Request for Production because it seeks information that is irrelevant to the question at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Whether or not Alloy has had any communications with a party that is not a rail shipper on the Line is irrelevant to the issues before the Board and is not a proper subject of discovery. Subject to and without waiving this objection, Alloy states that no such written communications exist.

Request for Production 10. Produce all written communications you have had with the City of Chicago, or its representatives (including attorneys), that relate to CTR, the Line, or this proceeding.

Response: Alloy objects to this Request on the basis that it requests privileged information. Any written communications between Alloy and the City of Chicago that relate to CTR, the Line, or this proceeding are subject to the common interest privilege and are not a proper subject of discovery. Alloy further objects to this Request for Production because it seeks information that is irrelevant to the question at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Whether or not Alloy has had any communications with the City about the Line is irrelevant to the issues before the Board and is not a proper subject of discovery.

Request for Production 11. Produce all written communications you have had with the City of Chicago that identify a dollar figure as it relates to the abandonment or cessation of the Line.

Response: Alloy objects to this Request for the reasons set forth in its objection to Request for Production 10.

Request for Production 12. Produce the contract between you and Lone Star Capital that evidences Lone Star Capital’s equity and/or debt investment in the Land.

Response: Alloy objects to this Request for Production because it seeks information that is irrelevant to the question at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” *City of Chicago, IL – Adverse*

Abandonment – Chicago Terminal Railroad in Chicago, IL, STB Docket No. AB-1036, at 3 (served June 16, 2010). Any contract between Alloy and Lone Star Capital is irrelevant to the issues before the Board and is not a proper subject of discovery.

Request for Production 13. Produce any written communications between you and Lone Star Capital that relate to the value you associate with eliminating the Line or terminating CTR's rights to provide rail service over the Line.

Response: Alloy objects to this Request for Production because it seeks information that is irrelevant to the question at issue in this proceeding: "whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests." *City of Chicago, IL – Adverse*

Abandonment – Chicago Terminal Railroad in Chicago, IL, STB Docket No. AB-1036, at 3 (served June 16, 2010). Any communications between Alloy and Lone Star Capital about the potential value of abandoning the Line are irrelevant to the issues before the Board and are not a proper subject of discovery.

Request for Production 14. Produce all documents, whether created by you or by others, that relate to or reflect the value of the Line as a whole, any portion of the Line, and/or any rail infrastructure on the Line. This Request includes all assessments of value (including but not limited to going concern value of the Line, net present value of the Line, liquidation value of the Line, value of real estate assets or rights, value of bridges and other infrastructure, book value of assets, and replacement value of assets) and all offers to purchase or acquire a direct or indirect interest in all or any portion of the Line.

Response: Alloy objects to this Request to the extent that it requests information protected by the work product doctrine or another applicable privilege. Subject to and without waiving this objection, Alloy states that it has no nonprivileged documents that are responsive to this request.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'MJW', is written over a horizontal line.

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Counsel to Alloy Property Company, LLC

Dated: September 5, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September 2017, I caused Alloy Property Company LLC's Responses to Chicago Terminal Railroad Company's First Set of Interrogatories, Requests for Production, and Requests to Admit to be served by electronic mail on the following counsel for Chicago Terminal Railroad Company:

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EXHIBIT B

[REDACTED]

[REDACTED]

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