

**BALL JANIK LLP**

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

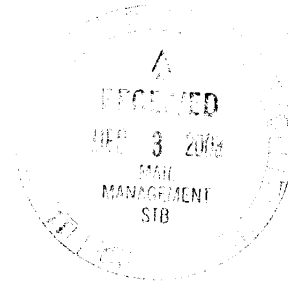
LOUIS E. GITOMER  
OF COUNSEL  
(202) 466-6532

December 3, 2003

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Room 700  
Washington, D. C. 20423

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igitomer@dc.bjllp.com



**RE:** Finance Docket No. 34421, *HolRail LLC-Petition for Exemption from 49 U.S.C. § 10901 to Construct and Operate a Rail Line in Orangeburg and Dorchester Counties, South Carolina*

Dear Secretary Williams:

Enclosed are the original and 10 copies of a Response and First Discovery Request and three discs with the files Response and Discovery.

Please time and date stamp the additional copy of this letter and the Response, and return them to our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer  
Attorney for CSX Transportation, Inc.

Enclosures

ORIGINAL

209527

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34421

HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT  
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,  
SOUTH CAROLINA

RESPONSE OF CSX TRANSPORTATION, INC.

Paul R. Hitchcock, Esq.  
Associate General Counsel  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202  
(904) 359-1192

Louis E. Gitomer, Esq.  
Of Counsel  
BALL JANIK LLP  
1455 F Street, N.W., Suite 225  
Washington, DC 20005  
(202) 638-3307

Attorneys for: CSX TRANSPORTATION,  
INC.

Dated: December 3, 2003

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 34421

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HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT  
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,  
SOUTH CAROLINA

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RESPONSE OF CSX TRANSPORTATION, INC.

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CSX Transportation, Inc. ("CSXT") opposes the Petition filed by HolRail LLC ("HolRail") and Holcim (US) Inc. ("Holcim") on November 13, 2003 (the "Petition"). CSXT is concurrently serving discovery on HolRail in compliance with 49 C.F.R. § 1121.2.

CSXT believes in market-based competition. However, CSXT is extremely concerned about competitive advantages that can be gained through the taking, invasion, and/or destruction of private property, as HolRail and Holcim are proposing. CSXT contends that a proposed line construction that would physically undermine or even destroy a competitor's property is contrary to the rail transportation policy and would result in an abuse of market power by the new entrant.

**BACKGROUND**

On November 13, 2003, HolRail filed a Verified Petition for Exemption from the pre-approval requirements of 49 U.S.C. § 10901 pursuant to 49 C.F.R. § 1121. HolRail seeks to construct a line of railroad between its facility in Holly Hill, SC and an unspecified connection with the Norfolk Southern Railway Company ("NS") (the "Line").

Prior to filing the Petition, HolRail met with the staff of the board's Section of Environmental Analysis ("SEA") on October 14, 2003, to discuss the construction project. On

October 28, 2003, HolRail filed a letter with SEA requesting waiver of the six month prefiling notice required by 49 C.F.R. § 1105.10(a). CSXT understands that the waiver was granted.

As noted, the Petition was filed under the rules at 49 C.F.R. § 1121, which require the submission of a case-in-chief. 49 C.F.R. § 1121.3(a). However, HolRail has, in the vaguest fashion possible, described three alternative routes with absolutely no detail about any of them. The proposed “route” that concerns CSXT is the one that HolRail claims would “share” the CSXT right-of-way with CSXT’s existing rail line, an astounding and unprecedented proposal. HolRail states that it intends to file a petition under 49 U.S.C. § 10901(d) to “cross” CSXT if CSXT refuses to make its right-of-way corridor available. CSXT will reserve for that proceeding its arguments why such a tortured “interpretation” of the statute is wrong. Suffice it to say here that section 10901(d) gives authority to cross from one side of the right-of-way to the other and not to confiscate a corridor.

The CSXT rail line that serves Holcim today traverses about 6,500 feet through the Four Hole Swamp on a narrow right-of-way. To the west of the CSXT line, South Carolina has built State Highway 453, about 20 feet west of the center-line of the rail line. On the east, the CSXT right-of-way extends only 40 feet from the center line of the track. Through Four Hole Swamp, CSXT’s line is built on moist swamp land, conditions that render the subsurface considerably less stable than in drained areas. The track is largely on a road bed elevated above the prevailing grade of the swamp. Any disruption of the physical base supporting CSXT’s track would disrupt operations and require very expensive repairs. Indeed, CSXT can foresee an instance where, as a result of HolRail’s construction in CSXT’s right-of-way, that the CSXT rail line is undermined and that the next train to use the CSXT track derails because of HolRail’s construction activities.

The possible physical harm to CSXT's line raises transportation issues, not environmental issues. For this reason, CSXT urges the Board not to conditionally grant HolRail's Petition and then address the environmental issues. Instead, CSXT urges the Board to deny HolRail's Petition because of the complete lack of information concerning the transportation ramifications of its proposed construction.

### **ARGUMENT**

Under 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that:

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

(2) either:

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market power.

CSXT contends that because the physical harm to CSXT cannot be determined by the paltry Petition filed by HolRail, regulation is necessary to carry out the rail transportation policy and to protect other shippers who currently ship via the CSXT line.

CSXT has concurrently sought discovery from HolRail and Holcim under 49 C.F.R. § 1121.2, because there is absolutely no information in the Petition that would allow CSXT to determine whether there is some way in which HolRail's plans could be implemented in a way that would not result in physical damage to CSXT's rail line. If the foundation of HolRail's Line is allowed to abut or occupy the same space as CSXT's foundation in Four Hole Swamp, it will destabilize CSXT's line that was built in an environment that challenges the ability to engineer a stable and safe rail line. Since HolRail has determined that CSXT's narrow right-of-way is the

“preferred corridor”, taking into account best and most economical engineering practices, CSXT must conclude that HolRail’s foundation will share physical space with CSXT’s foundation. Given the inherent moist swamp land conditions, which render the subsurface considerably less stable than in drained areas, supporting CSXT’s elevated road bed, HolRail must bear the burden of showing its proposals will not have the anticipated effect. However, since there is no evidence that HolRail’s construction will not physically damage CSXT’s line, it is clear that regulation is necessary to carry out the rail transportation policy.

Physical harm to CSXT’s line is contrary to a number of the provisions of the rail transportation policy.

Construction of a new rail Line by HolRail that will physically disable CSXT from competing with HolRail will not allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail (49 U.S.C. § 10101(1)); will not minimize the need for Federal regulatory control over the rail transportation system (49 U.S.C. § 10101(2)) because of the ongoing disputes that will arise as to the effect of HolRail’s construction on CSXT’s physical rail line; will not promote a safe and efficient rail transportation system (49 U.S.C. § 10101(3)) because physical harm to CSXT’s line will create an unsafe physical environment in which CSXT trains must operate on the line; and will not ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers (49 U.S.C. § 10101(4)) because HolRail will physically disable CSXT’s line and at best will make it more expensive and more difficult to provide service, if not impossible over a physically damaged or destroyed line.

CSXT also contends HolRail’s proposal: will not foster sound economic conditions in transportation and ensure effective competition (49 U.S.C. § 10101(5)) because the physical

damage to CSXT's line will cause unanticipated expenditures for damage caused by a competitor; will not allow CSXT to operate transportation facilities and equipment without detriment to the public health and safety (49 U.S.C. § 10101(8)) because of the fragile ecosystem of the swamp that is within feet of the CSXT line; will not encourage honest and efficient management of railroads (49 U.S.C. § 10101(9)) because of the ability of HolRail to physically disable CSXT from competing through construction in an unstable area; and will not encourage safe and suitable working conditions in the railroad industry (49 U.S.C. § 10101(11)) where the CSXT line could be destabilized without any visual indications before a train moves over the line.

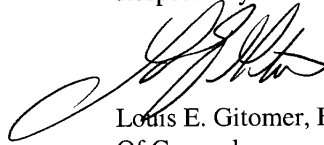
In addition to the harm to the rail transportation policy, HolRail's replacement of CSXT as the rail carrier would open the door for the abuse of market power. HolRail is a subsidiary of Holcim, a cement manufacturer. HolRail also proposes serving two of its competing cement manufacturers in the area. It would be in Holcim's interest for HolRail to charge even marginally higher rates to Holcim's competitors or to provide marginally worse service to them for the benefit of Holcim. As can be seen from the Petition, HolRail is merely a vehicle that Holcim is using to advance its proposal. It is not at all clear that the traffic volume on this branch line can support two railroads. If HolRail is successful, it may end up as the sole carrier, leaving competing cement manufacturers dependent on their competitor for service. In short, there is a real prospect that the other cement manufacturers that rely on CSXT service on the line could be harmed by HolRail's proposal.

### **CONCLUSION**

HolRail's Petition is void of any concrete proposal. CSXT contends that there are serious issues that must be addressed before HolRail is even granted conditional authority to build the

Line. There are no questions answered by the Petition. CSXT respectfully requests the Board to deny the Petition on the basis that as HolRail's case-in-chief it does not meet the exemption criteria of 49 U.S.C. § 10502 because of the open questions concerning the physical harm to CSXT's line that could occur from HolRail's amorphous construction and operation.

Respectfully submitted,



Paul R. Hitchcock, Esq.  
Associate General Counsel  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202  
(904) 359-1192

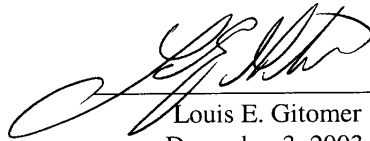
Louis E. Gitomer, Esq.  
Of Counsel  
BALL JANIK LLP  
1455 F Street, N.W., Suite 225  
Washington, DC 20005  
(202) 638-3307

Attorneys for: CSX TRANSPORTATION,  
INC.

Dated: December 3, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Response to be served by first class mail, postage pre-paid on Counsel for HolRail LLC.

  
\_\_\_\_\_  
Louis E. Gitomer  
December 3, 2003

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 34421

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HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT  
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,  
SOUTH CAROLINA

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CSX TRANSPORTATION, INC. FIRST DISCOVERY REQUESTS TO HOLRAIL LLC

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Paul R. Hitchcock, Esq.  
Associate General Counsel  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202  
(904) 359-1192

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SOUTH CAROLINA

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CSX TRANSPORTATION, INC. FIRST DISCOVERY REQUESTS TO HOLRAIL LLC

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Pursuant to 49 C.F.R. §§ 1121.2 and 1114.21, .26, .27, and .30, CSX Transportation, Inc. ("CSXT") submits its First Discovery Request to HolRail LLC ("HolRail") and Holcim (US) Inc. ("Holcim"), in connection with the petition filed on November 13, 2003, by HolRail and verified by an employee of Holcim in this proceeding. Counsel for HolRail and Holcim should contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

CSXT requests that HolRail and Holcim respond to the following Interrogatories, Document Requests and Requests for Admissions in compliance with 49 C.F.R. Part 1114 and in accordance with the following Definitions and Instructions. The responses to these discovery requests should be served on CSXT through their undersigned attorneys at the addresses below, by **December 18, 2003**.

**DEFINITIONS AND INSTRUCTIONS**

1. "CSXT" shall mean the CSX Transportation, Inc.

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2. "HolRail" shall mean HolRail LLC, and any departments, subsidiaries, affiliates, or related companies, its present and former employees, agents, officers, directors, advisors, consultants, divisions, and all other persons or entities acting on its behalf.

3. "Holcim" shall mean Holcim (US) Inc., and any departments, subsidiaries, affiliates, or related companies, its present and former employees, agents, officers, directors, advisors, consultants, divisions, and all other persons or entities acting on its behalf.

4. "Line" shall mean the line of railroad that HolRail proposes to construct in the Petition for Exemption filed on November 13, 2003, within the CSXT right-of-way.

5. "Western Line" shall mean the alternate line proposed to be built a few hundred feet west of the existing CSXT line (as used on page 6 of the Petition).

6. "Eastern Line" shall mean the second preferred route to be built about 50 yards to the east of CSXT's Line (as used on page 7 of the Petition).

7. The "CSXT Line" shall mean the line of railroad owned and operated by CSXT between the Holcim Facility at Holly Hill, SC, and Giant, SC.

8. "Petition" shall mean the Petition for Exemption filed with the STB by HolRail in Finance Docket No. 34421 on November 13, 2003.

9. "STB" shall mean the Surface Transportation Board.

10. "Communicate" and "Communication" shall mean every manner or means of disclosure or transfer or exchange of information whether orally, by document, or otherwise, and whether face to face, in a meeting, by telephone, or other electronic media, mail, personal delivery, or otherwise.

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11. "Person" shall mean and include natural persons, partnerships, corporations, and all other forms of organization or association.

12. "Document" or any variation thereof is used in its broadest sense and shall mean any writing, drawing, graph, chart, photograph, tape, phono-record, magnetic disc, compact disc, or other data compilation from which information can be obtained, translated, if necessary through devices into reasonably usable form, and includes, but is not limited to, correspondence, telegrams, cables, telex messages, minutes, reports, studies, specifications, order forms, bills of sale, leases, recordings of telephone or other conversations, or of interviews, conferences or other meetings, affidavits, statements, journals, statistical records, financial statements, accounting records, desk calendars, appointment books, diaries, lists, tabulations, summaries, computer printouts, photographs, maps, or any other items of a similar nature, including all originals, drafts, and non-identical copies.

13. The terms "relate" or "relating to" are to be used in their broadest sense and shall mean to refer to, discuss, involve, reflect, deal with, consist of, represent, constitute, emanate from, be directed at, or in any way to pertain to, in whole or in part, the subject.

14. The singular shall include the plural and vice versa, and the conjunctive shall include the disjunctive and vice versa in order to give these interrogatories and requests for admission the broadest scope.

15. To "identify" or to "describe" a document means to state the following:

- a. The full name of the person who prepared it and his last known address;

- 
- b. The full name of the person who signed it or over whose name it was issued and his last known address;
  - c. The full name of each person to whom it was addressed or distributed and his last known address;
  - d. The nature and substance of the document with sufficient particularity to enable it to be identified;
  - e. Title and number of pages;
  - f. Its date or, if it bears no date, the date or approximate date when it was prepared;
  - g. Whether any other documents were attached to or included with such documents; and
  - h. Its physical location and the name and address of its custodian.

16. To "identify" a person when used with respect to a natural person means to state the person's full name, home and business addresses and telephone numbers, employer and job position at the present time and at the time to which the interrogatory relates, and whether the person is ill, disabled, incompetent, or deceased. To identify a person where the person to be identified is anything other than a natural person means to state its full name, the kind of legal entity which it is, its present or last known address, and its chief executive officer.

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17. "Identify," "describe," or any variation thereof, when used with respect to a conversation, meeting, or oral discussion, shall mean stating and describing the date and location of such conversation, meeting, or oral discussion, the name of each person who was present at or who participated in such conversation, meeting, or oral discussion, and the manner in which the conversation, meeting, or oral discussion was conducted (e.g., face-to-face conversation, telephone, etc.)

18. "Identify" means to describe or explain when used in any other context.

19. The answers to these interrogatories, document requests and requests for admissions shall include such information and documents as are within HolRail's custody, possession, or control, or are within the custody, possession, or control of any of HolRail's consultants, accountants, attorneys, or other agents, or which are otherwise available to HolRail. In responding to these interrogatories and requests for admissions, HolRail is specifically instructed to review the personal files, records, notes, correspondence, daily calendars, and telephone logs or records of all persons who have knowledge of the information inquired about in each request.

20. If the answers or portions of answers to these interrogatories are supplied upon information and belief rather than upon actual knowledge, HolRail should so state and specifically describe or identify the source or sources of such information and belief.

21. Each interrogatory should be answered separately and fully in writing. The answers to these interrogatories should include, but not be limited to, an identification of each person having knowledge of the information provided in the answer, and of all documents (including calculations) and communications relating to that information.

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22. If HolRail objects to any interrogatory, document request or request for admission, HolRail must state in writing the reason for the objection.

23. These discovery requests are continuing in nature and should be amended and supplemented immediately if at any time any of the following occurs:

a. HolRail determines that the original answers to these discovery requests as of the time they were filed, for whatever reason, were incorrect;

b. new developments occur (such as the retaining of an expert, etc.) which, if HolRail's answers were being filed as of the time of these new developments, would have to be disclosed in those answers;

c. new information is developed (such as the identification of additional witnesses or additional documents) which, if known at the time of the filing of the original answers, would have been required to have been disclosed in such answers.

24. Unless otherwise specified, the time period covered by these discovery requests is January 1, 2002, to the date of HolRail's responses.

25. Each interrogatory, document request and request for admission herein stands independent of each and every other interrogatory, document request and request for admission. No interrogatory, document request or request for admission modifies, limits, or relates to any other interrogatory, document request or request for admission unless specifically stated in the interrogatory, document request or request for admission.

26. If any discovery request herein cannot be complied with in full, it shall be complied with to the extent possible with an explanation as to why full compliance is not possible.

27. If any document sought to be discovered is in the Petition, then HolRail shall refer to the page number in the Petition where the document may be found.

### **INTERROGATORIES**

1. Identify the Person who reevaluated Holcim's rail transportation needs.
2. Identify the end points of the Line.
3. Identify the number of truckloads of cement shipped from the Holcim plant at Holly Hill in 2000, 2001, 2002, and 2003.
4. Identify the total annual number of rail cars proposed to be shipped to and from the Holcim plant at Holly Hill, SC in 2004, 2005, and 2006.
5. Identify the total annual number of rail cars proposed to be shipped to and from the Holcim plant at Holly Hill, SC in 2004, 2005, and 2006, via HolRail.
6. Identify the date of creation of each document produced in response to the following document requests. If the exact date of creation of the document is not known, identify whether it was created before or after the filing of the Petition on November 13, 2003.
7. Identify the factors Holcim considered in reevaluating its rail transportation needs.
8. Identify the factors Holcim has used to determine that CSXT provides "consistently poor service."
9. Identify the point of connection between the line HolRail proposes to construct and the NS at Giant, SC.

10. Identify the Person who studied the feasibility of building the Line in the CSXT right-of-way.
11. Identify the number of annual carloads that Holcim projects to transport outbound via rail upon reaching optimum production.
12. Identify the number of annual truckloads that Holcim projects to transport outbound upon reaching optimum production.
13. Identify the third party consultant retained by HolRail in compliance with 49 C.F.R. § 1105.10(d).
14. Identify the restrictions that CSXT imposes on Holcim's use of private rail cars.
15. Identify the locations where HolRail proposes to cross the CSXT track south of Holcim's Holly Hill facility for each alternative.
16. Identify the dollar amount budgeted by HolRail or Holcim for construction of the Line.
17. Identify the Board resolutions of Holcim or HolRail authorizing expenditure of funds to construct the Line, the Eastern Line, or the Western Line.

#### **DOCUMENT REQUESTS**

1. Produce all documents used to prepare the Petition.
2. Produce all documents used to respond to these discovery requests.
3. Produce all agreements granting HolRail or Holcim access to the land owned by a neighboring cement facility as discussed at page 6 of the Petition.
4. Produce all construction plans for the Line, the Eastern Line and the Western Line.

5. Produce the study the HolRail refers to on page 6 of the Petition.
6. Produce all documents relating to the service to be provided by NS discussed in the Petition.
7. Produce all documents that are the basis for the statement at page 5 of the Petition that CSXT's "service is unreliable and inadequate".
8. Produce all documents that are the basis for the statement at page 6 of the Petition that "Holcim has studied the dimensions of the corridor and concluded that construction and operation of HolRail's rail line parallel to the existing CSX line, within the CSX right-of-way, is feasible and would not affect CSX's operations."
9. Produce all engineering plans and all studies prepared since January 1, 1995 to build the Line over the "existing CSX rail corridor", as stated on Page 6 of the Petition.

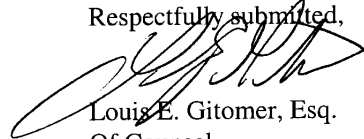
#### **REQUESTS FOR ADMISSIONS**

1. Admit or deny that HolRail or Holcim has not conducted an on-site inspection of the CSXT right-of-way where HolRail intends to build the Line.
2. Admit or deny that HolRail or Holcim has discussed the operation of the Line with NS.
3. Admit or deny that HolRail or Holcim has not budgeted any funds to construct the Line in 2004.
4. Admit or deny that HolRail or Holcim has not budgeted any funds to construct the Line in 2005.

5. Admit or deny that HolRail or Holcim has not budgeted any funds to construct the Line in 2006.
6. Admit or deny that the Line is only two miles in length.
7. Admit or deny that that HolRail or Holcim has discussed operations over the facility at Giant with Giant Cement.
8. Admit or deny that there is an agreement for HolRail to operate over the property of Giant Cement.
9. Admit or deny that HolRail does not intend to cross the CSXT track running south of the Holcim facility at Holly Hills.
10. Admit or deny that HolRail intends to construct the Line parallel to the CSXT track south of Holcim's Holly hill facility.
11. Admit or deny that the ground stability along the Line has been studied by HolRail or Holcim.
12. Admit or deny that the ground stability along the Line has been inspected by HolRail or Holcim.

Paul R. Hitchcock, Esq.  
Associate General Counsel  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202  
(904) 359-1192

Respectfully submitted,



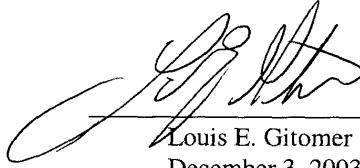
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1455 F Street, N.W., Suite 225  
Washington, DC 20005  
(202) 638-3307

Attorneys for: CSX TRANSPORTATION,  
INC.

Dated: December 3, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the foregoing document to be served by hand on  
counsel for the HolRail LLC.



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Louis E. Gitomer  
December 3, 2003