

Before the
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 865-X

HONEY CREEK RAILROAD, INC.-ABANDONMENT
IN HENRY COUNTY, IN

and

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARATORY ORDER

**SECOND DECLARATION OF
KATHLEEN CLUBB KAUFFMAN**

ENTERED
Office of Proceedings

JUL 23 2007

Part of
Public Record

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and Roberts Construction, Inc*

Dated: July 23, 2007

Before the
SURFACE TRANSPORTATION BOARD

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HONEY CREEK RAILROAD, INC.—ABANDONMENT
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SECOND DECLARATION OF KATHLEEN CLUBB KAUFFMAN

My name is Kathleen Clubb Kauffman. I am over the age of 21, and I am competent to make this declaration. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

- A. I am an attorney with the law firm of Ackerson Kauffman Fex, P.C. at 1250 H Street, N.W., Suite 850, Washington, D.C. 20005, counsel for Gary L. Roberts, Roberts Pipeline Construction Company, Inc. and Roberts Construction, Inc. ("Roberts") in this action. I make this declaration in support of the [official name of sur-reply].
- B. I am an active member in good standing of the Bar of the District of Columbia, and have been a member in good standing at all times since my admission to the Bar in November 1980.
- C. Attached hereto, in exhibits corresponding to the sequential number tabs, are true and accurate copies of the following documents

1. Anthony J. Will, RailInc , *Official Railroad Station List, OPSL 6000-Y* 156 and 159 (Issued March 1, 2004).
2. Anthony J. Will, RailInc., *Official Railroad Station List, OPSL 6000-Y* 1-2 (Issued March 1, 2004)
3. Anthony J. Will, RailInc., *Official Railroad Station List, OPSL 6000-Y* 3 (Issued March 1, 2004).
4. Letter from Counsel for Wheeling & Lake Erie Railroad to Surface Transportation Board, Re: Docket AB 227 (Sub-No. 8X), Wheeling & Lake Erie Railway Company—Abandonment Exemption—In Huron County, Ohio, December 20, 1996.
- 5 *Seminole Gulf Railway, L.P.—Exemption to Acquire and Operate—CSX Transportation, Inc* , FD No. 31155, 52 FR 45509 (Serv November 30, 1987).
- 6 Chronological Case Summary (CCS), *Morristown Grain v Farmland In* , Case No. 33C01-0111-CP-358, Henry County Circuit Court.
7. Farmland Insurance Company’s Brief in Support of Motion for Partial Summary Judgment, filed June 16, 2006, *Morristown Grain v. Farmland In* , Case No. 33C01-0111-CP-358, Henry County Circuit Court.
8. Order on Partial Summary Judgment, entered August 16, 2006, *Morristown Grain v Farmland In* , Case No. 33C01-0111-CP-358, Henry County Circuit Court.

9. Letter from William B. Keaton to John H. Brooke, December 13, 2005.
10. "Board turns deaf ear to opponents," New Castle (IN) Courier Times, Thursday, May 10, 2007

Dated this 23rd day of June, 2007

I, Kathleen Clubb Kauffman, declare under penalty of perjury that the foregoing is true and accurate Further, I certify that I am qualified and authorized to file this declaration.


Kathleen Clubb Kauffman

EXHIBIT 1

OFFICIAL RAILROAD STATION LIST™

ISSUED
MARCH 1, 2004

EFFECTIVE
MARCH 15, 2004

OPSL™ 6000-Y
(Cancels OPSL 6000-X)

Includes National Rate Basis™ and Centralized Station Master Data

- ◆ A complete list of over 40,000 rail freight stations on more than 600 carriers in the U.S., Canada and Mexico
- ◆ Official Rate Basis Points
- ◆ Official Centralized Station Master Data
- ◆ Rating ZIP Codes
- ◆ Official revenue-capable interchange data from Industry Junction File
- ◆ Junction Rule 260 and Interchange points
- ◆ Standard Point Location Codes
- ◆ Freight Station Accounting Codes
- ◆ Freight Handling facilities and restrictions
- ◆ Station Switch Limit information

Anthony J. Will
Issuing Officer

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INDIANA

ALPHABETICAL - FREIGHT

STATION	COUNTY	RULE 200	RR	OPBL	FBAC	SPLC	NATIONAL RATE BASIS	SWTCH LIMIT CITY	RATE 20
Roby IN (41)	[Lake]	ROBY	NS	68855	70857	383501	Chicago IL	Chicago, IL	46328
Roby IN (3241)	[Lake]	ROBY	UP	20222	20222	383501	Chicago IL	Chicago IL	46322
Rochester IN (3156-3700)	[Fulton]		CIND	62437	62437	382930			46075
Rochester IN (1-295-3100-3700)	[Fulton]		FC	1	1	382930			46075
Rochester IN (3700)	[Fulton]	RCHES	NS	72815	65265	382930	Hibbard, IN		46075
Rochester IN (274-800-3114)	[Fulton]		TPW	1510	20437	382930	Hibbard IN		46075
Rock Island, IN (1-22-41-3000-3489)	[Manon]		CSXT	48100	19040	388815	Indianapolis IN	Indianapolis, IN	46208
Rockfield IN	[Carroll]		NS	15000	23209	386833	Logansport IN		46077
Rockport IN (1-22-3000-3489)	[Spencer]	RCKP	CSXT	21006 38	40916	378880	Cannelton IN		46780
Rockport IN	[Spencer]	RCKP	NS	47750	50420	378880	Cannelton, IN		46780
Rolling Prairie IN (41)	[La Porte]		NS	86915	70650	383118	South Bend IN		46371
Romney IN (1-3000-3489)	[Tippecanoe]		CSXT	24160	40845	389196	LaFayette IN		47060
Rose Lawn, IN (1-3000-3489)	[Newton]		CSXT	24075	40809	383914	Malden, IN		46372
Roseburg IN (1-3100-3700)	[Grant]		CERA	10481	10481	385748			46963
Roseburg IN (3156-3700)	[Grant]		CIND	61481	61481	385748			46963
Roseburg IN (3700)	[Grant]		NS	71140	85162	385748	Logansport IN		47253
Roseburg IN (274-800-3114)	[Grant]		TPW	1480	10481	385748	Manon, IN		46963
Royal Center IN (1-416-3100-3700)	[Cass]		ARE	80073	80073	386227			46076
Royal Center IN (3156-3700)	[Cass]		CIND	72073	72073	386227			46076
Royal Center IN (3700)	[Cass]		NS	70037	65855	386227	Logansport IN		46076
Royal Center IN (328-800-3114)	[Cass]		TPW	1575	80073	386227	Logansport IN		46076
Royerton IN	[Delaware]		NS	11525	15080	367335	Muncie, IN		47302
Rushville IN (1-3000-3489)	[Rush]		CSXT	45383	75116	371583	Mauzy IN		46175
Russaville, IN (1-3100-3700)	[Howard]		CERA	10168	10168	385998			46076
Russaville IN (3156-3700)	[Howard]		CIND	61168	61168	385998			46076
Russaville IN (3700)	[Howard]		NS	11945	14121	385998	Tipton IN		46076
Russaville IN (274-800-3114)	[Howard]		TPW	1415	10168	385998	Tipton IN		46076
Rutland, IN	[Marshall]		NS	10580	10437	382882	Hibbard IN		46563
Salem, IN (1-3000-3489)	[Washington]		CSXT	24325	40880	375750	Mitchell IN		47187
Sandborn, IN (1-3126-3495-3700)	[Knox]		ISRR	8890	8890	378912	Washington IN		47820
Sandborn, IN (3700)	[Knox]		NS	73086	65670	378912	Washington IN		47820
Santa Claus, IN	[Spencer]		HOS	105	105	378644	Cannelton, IN		46780
Santa Claus IN (1-413-840-3100-3700)	[Spencer]		NS	72290	80512	378644	Cannelton IN		46780
Schererville, IN (41)	[Lake]		NS	87490	70688	383545	Malden, IN	Chicago, IL	46375
Schneider IN	[Lake]		CPRS	8194 75	282	383596			46375
Schneider IN (41)	[Lake]		NS	87385	70685	383596	Kankakee IL		46375
Scircleville IN	[Clinton]		NS	10960	11223	388252	Tipton, IN		46841
Scottsburg IN (1-3495)	[Scott]		LIRC	8564	8564	376450	Columbus IN		47123
Seaford IN (1-800-3114)	[Whitley]		TPW	31	31	386455	Monon IN		47080
Sellersburg IN (1-3495)	[Clark]		LIRC	8576	8576	375873	Speed IN		47122
Sellersburg, IN (1-3100)	[Clark]		SIND	105	105	375873			47122
Selma IN (1-22-41-3000-3489)	[Delaware]		CSXT	48050	18975	387344	Muncie IN		47080
Seymour IN (1-3000-3489)	[Jackson]	SEYMR	CSXT	43890	71889	375111	Columbus IN		47241
Seymour, IN (1-3495)	[Jackson]	SEYMR	LIRC	8556	8556	375111	Columbus IN		47241
Shadeland IN (1-22-3000-3489)	[Tippecanoe]		CSXT	24147	40819	389172	LaFayette, IN		47080
Shadeland IN	[Tippecanoe]		NS	15025	23238	389172	LaFayette IN		47080
Sharpeville, IN (1-3100-3700)	[Tipton]		CERA	30075	30075	308122			46076
Sharpeville IN (3156-3700)	[Tipton]		CIND	83075	83075	388122			46076
Sharpeville, IN	[Tipton]		NS	11285	14164	368122	Tipton IN		46076
Sharpeville IN (274-800-3114)	[Tipton]		TPW	1520	30075	388122	Tipton IN		46076
Sheff IN (1-3100)	[Benton]		KBSR	538	538	368816			47080
Shelburn, IN (1-3000-3489)	[Sullivan]	SHLBN	CSXT	21006 80	40925	373918	Sullivan IN		46377
Shelby IN (1-3000-3489)	[Lake]		CSXT	24065	40807	383594	Malden IN		46377
Shelby IN (41)	[Lake]	SHLBY	NS	87840	70887	383594	Malden IN		46377
Shelbyville IN (1-3100-3700)	[Shelby]	SBYVI	CIND	50826	50826	372150	Shelbyville IN		46377
Shelbyville IN (1-22-41-3000-3489)	[Shelby]	SBYVI	CSXT	43180	19120	372150	Shelbyville IN		46377
Shidlers IN	[Delaware]		NS	11520	15057	387332	Muncie IN		47080
Shops IN (1-3000-3489)	[DeWanna]		CSXT	43575	71905	378581	Washington, IN		47080
Sidney, IN	[Kosciusko]		NS	10545	10403	382682	Silver Lake IN		46076
Silver Lake IN (41)	[Kosciusko]		NS	67170	70684	382688	Silver Lake IN		46076
Sims, IN (1-3100-3700)	[Grant]		CERA	10411	10411	385768			46076
Sims IN (3156-3700)	[Grant]		CIND	61411	61411	385768			46076
Sims, IN (3700)	[Grant]		NS	71155	65158	385768	Logansport, IN		46076
Sims, IN (274-800-3114)	[Grant]		TPW	1445	10411	385768	Manon, IN		47080
Smythe IN	[Vanderburgh]		NS	47810	50448	379482	Lippe IN		46076
Somerville IN (1-22)	[Gibson]		ISRR	15383	15383	379172			46076
Somerville, IN	[Gibson]		NS	73085	65677	379172	Oakland City IN		46076
South Bend Cr IN (41)	[St Joseph]	SBEND	NS	86802	70702	382300	South Bend IN		46076
South Bend IN (3188)	[St Joseph]		AMTK	48095	48095	382300			46076
South Bend, IN	[St Joseph]	SBEND	BNSF	85054 55	71875	382300	South Bend IN		46076
South Bend IN (1-3328)	[St Joseph]	SBEND	CN	55903	55903	382300	South Bend IN		46076
South Bend, IN (1-3100)	[St Joseph]	SBEND	CSS	115	115	382300	South Bend IN		46076
South Bend, IN	[St Joseph]	SBEND	NS	18405	31001	382300	South Bend IN		46076
South Gary IN	[Lake]		NS	10650	10493	383528	Chicago IL		46328

ALPHABETICAL - FREIGHT

STATION	COUNTY	RULE 260	RR	OPSL	FSAC	SPLC	NATIONAL RATE BASIS	SWITCH LIMIT CITY	RATE ZIP
South Milford, IN (1-3100-3700)	[Lagrange]		IN	65302	65302	381277	South Milford IN		46788
South Milford, IN (3700)	[Lagrange]		NS	72253	65302	381277	South Milford IN		46788
South Point, IN (1-3000-3489)	[Tippicanoe]		CSX	2455	40844	368178	Lafayette IN		47905
South Point, IN	[La Porte]	SWANA	NS	10624	10487	373186	Malden, IN		46390
South Whaley, IN	[Whitley]	SWTLY	NS	10540	10386	361992	Silver Lake IN		46787
South Whaley, IN	[Manon]	STHPR	CSXT	48105	19080	368868	Indianapolis IN		46217
South Whaley, IN (1-22-41 3000-3489)	[Manon]	STHPR	IIRC	8469	8469	368868	Indianapolis IN		46217
South Whaley, IN (1-3489)	[Jackson]		CSXT	43665	71876	375196	Mitchell IN		47260
South Whaley, IN (1-3000-3489)	[Clark]		LIRC	8575	8575	375656	Speed IN		47172
South Whaley, IN (1-3489)	[Clark]		SIND	100	100	375656	Speed IN		47172
South Whaley, IN (1-3100)	[Manon]		CSXT	48080	19052	368851	Indianapolis IN	Indianapolis, IN	46224
South Whaley, IN (1-22-41 3000-3489)	[Wabash]		NS	67185	70667	365358	Silver Lake IN		46992
South Whaley, IN (1-3489)	[Owen]		ISRR	8884	8884	373160	Bloomington IN		47480
South Whaley, IN (1-3100-3700)	[Owen]	SPNIN	NS	73098	85671	173160	Bloomington, IN		47480
South Whaley, IN (3700)	[De Kalb]		NS	14790	35222	371484	Fi Wayne N		46788
South Whaley, IN	[Warwick]		NS	47816	50444	378834	Oakland City IN		47619
South Whaley, IN	[Dubois]		NS	47235	50346	378275	Huntingburg, IN		47575
South Whaley, IN (1-22 3000-3489)	[De Kalb]		CSXT	42205	71679	381482	Fi Wayne IN		46785
South Whaley, IN (1-3000-3489)	[Luka]		CSXT	24050	40804	363346	Kankakee IL		46373
South Whaley, IN (1-3100)	[Luka]		NS	67370	70662	361541	Kankakee IL		46373
South Whaley, IN (1-3100 3700)	[Decatur]		CND	50727	50727	371977			47272
South Whaley, IN (1-22-3000 3489)	[Posey]		CSXT	21010	40327	379961	Lippe IN		47620
South Whaley, IN (1-3000-3489)	[Sullivan]		CSXT	21007 24	40837	373911	Terre Haute, IN		47854
South Whaley, IN (1-16 3100-3700)	[Pulaski]		ARF	80155	80155	363772			46985
South Whaley, IN (3156-3700)	[Pulaski]		CIND	72152	72152	363772			46985
South Whaley, IN (3700)	[Pulaski]		NS	70419	65856	363772	Hubbard IN		46885
South Whaley, IN (328-600-3114)	[Pulaski]		TPW	1580	80155	363772	Hubbard IN		46985
South Whaley, IN	[Warren]		NS	15100	27275	369282	Marshallfield IN		47982
South Whaley, IN (1-3100-3700)	[Steuben]		IN	60817	60817	381186	South Milford IN		46765
South Whaley, IN (3700)	[Steuben]	STEIN	NS	72264	80911	381186	South Milford IN		46765
South Whaley, IN	[Warwick]		NS	47805	50447	370876	Lippe IN		47619
South Whaley, IN (1-3100)	[Warren]		KBSR	548	548	369263	Danville IL		47973
South Whaley, IN (1-3328)	[La Porte]	STLWL	LN	55809	55809	363163	South Bend IN		46350
South Whaley, IN (1-3100)	[La Porte]	STLWL	CSS	84	84	363163	South Bend IN		46371
South Whaley, IN (1-22-3100)	[Luka]		EJF	355	75	363513	Chicago IL		60607
South Whaley, IN	[Vanderburgh]		NS	47812	50451	379510	Lippe IN		47708
South Whaley, IN (1-3000 3489)	[Sullivan]	SULLV	CSXT	21009 76	40734	373750	Sullivan IN		47682
South Whaley, IN (28)	[Sullivan]	SULLV	INRD	11090	11090	373950			47682
South Whaley, IN (1-3100)	[Henry]		HCRR	300	3	367638	Muncie IN		47388
South Whaley, IN (1-3100)	[Tippicanoe]		KBSR	574	574	389119			47662
South Whaley, IN (41)	[Madison]		NS	67245	70873	367812	Marion IN		46073
South Whaley, IN (1-3100-3700)	[Ripley]		CIND	50399	50399	374118			47041
South Whaley, IN (1-3100)	[Benton]		KBSR	552	552	368844			47944
South Whaley, IN (1-3100-3700)	[Grant]		CCRA	10429	10429	365788			46986
South Whaley, IN (3156-3700)	[Grant]		CIND	61429	61429	365788			46986
South Whaley, IN (3700)	[Grant]		NS	71150	65160	365768	Logansport IN		46986
South Whaley, IN (274-600 3114)	[Grant]		TPW	1450	10479	365768	Marion IN		46986
South Whaley, IN (1-3-CC-3-CC)	[Grant]		CERA	40065	40065	365725			46987
South Whaley, IN (3156 3700)	[Grant]		CIND	64065	64065	365725			46987
South Whaley, IN (3700)	[Grant]		NS	71294	65168	365725	Logansport IN		46987
South Whaley, IN (274 600-3114)	[Grant]		TPW	1530	40085	365725	Marion IN		46952
South Whaley, IN	[Greene]	SWCTY	CPRB	8222 53	210	371709			47465
South Whaley, IN (1-3100)	[Greene]	SWCTY	NRD	13880	13880	373768	Sullivan IN		47485
South Whaley, IN (1-3126-3425-3700)	[Greene]	SWCTY	ISRR	8674	8674	373768	Sullivan IN		47485
South Whaley, IN (3700)	[Greene]	SWCTY	NS	73080	65677	373768	Sullivan IN		47485
South Whaley, IN (1-3100-3700)	[Howard]		CFRA	10377	10377	365832			46938
South Whaley, IN (3156-3700)	[Howard]		CIND	81377	61377	365832			46936
South Whaley, IN (3700)	[Howard]		NS	71160	65168	365832	Logansport IN		47901
South Whaley, IN (274-600 3114)	[Howard]		TPW	1440	10377	375932	Marion IN		46936
South Whaley, IN (1-3000-3489)	[Kosciusko]		CSXT	42160	71660	362615	Millsburg, IN		46567
South Whaley, IN (1-3100)	[Warren]		KBSR	545	545	369226	Danville IL		47973
South Whaley, IN (1-3100)	[Benton]		KBSR	559	559	368892			47984
South Whaley, IN (1-3489)	[Bartholomew]		LIRC	8482	8482	172637	Columbus IN		47280
South Whaley, IN (1-3-640-3100-3700)	[Perry]		HOS	125	125	377886	Cannelton, IN		47586
South Whaley, IN (3700)	[Perry]		NS	72294	61853	377886	Cannelton, IN		47586
South Whaley, IN	[Crawford]		NS	47185	50365	377618	Marion IN		47140
South Whaley, IN (1-3100)	[Benton]		KBSR	558	558	368892			47984
South Whaley, IN (1-3100)	[St Joseph]	TERCO	NS	16905	70948	362435	South Bend IN		47838
South Whaley, IN (1-3100)	[Vigo]	TERHA	CPRB	8207	241	373440	Terre Haute IN		47908
South Whaley, IN (1-3000 3489)	[Vigo]	TERHA	CSXT	21007 08	40811	373440	Terre Haute IN		47908
South Whaley, IN (1-3100 3700)	[Dearborn]		CIND	50236	50236	374759	Lawrenceburg IN		47022
South Whaley, IN (1-22-4 3000-3489)	[Dearborn]	THTCM	NS	68770	70948	374159			47022
South Whaley, IN (41)	[Newton]		CSXT	24070	40808	363912	Maklen IN		46381

EXHIBIT 2

OFFICIAL RAILROAD STATION LIST™

ISSUED
MARCH 1, 2004

EFFECTIVE
MARCH 15, 2004

OPSL™ 6000-Y
(Cancels OPSL 6000-X)

Includes National Rate Basis™ and Centralized Station Master Data

- ◆ A complete list of over 40,000 rail freight stations on more than 600 carriers in the U.S., Canada and Mexico
- ◆ Official Rate Basis Points
- ◆ Official Centralized Station Master Data
- ◆ Rating ZIP Codes
- ◆ Official revenue-capable interchange data from Industry Junction File
- ◆ Junction Rule 260 and Interchange points
- ◆ Standard Point Location Codes
- ◆ Freight Station Accounting Codes
- ◆ Freight Handling facilities and restrictions
- ◆ Station Switch Limit information

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Introduction to the OPSL 6000-Y

What is the OPSL?

The Official Railroad Station List, known in the rail industry as the OPSL, is a rail industry governing geographical publication, an authoritative and highly up-to-date rail station directory.

Governing publication

Since 1908, the OPSL has been a governing publication for rail geography. In fact, that's the reason the OPSL was created.

At the turn of the century, there were hundreds of rail carriers, far more than there are now. Each published its own rate publications, establishing rates for the movement of various commodities over its line. Very often, each rate publication had its own list of stations. Alternately, carriers published their own separate list of stations.

The result was predictable. To ship by rail, you had to keep a large library of rate and station publications. Rate books and station lists were confusing, inconsistent and often erroneous. Moreover, every time a station changed, the serving carrier would have to revise its rate tables.

In 1908, the first OPSL brought order and convenience to the process of listing stations. The idea behind the OPSL was to give carriers one central source in which to publish an authoritative list of their stations and facilities. Carriers using the OPSL need only refer to the OPSL in their other publications. The OPSL's list of stations would be incorporated by reference in those publications and the carriers would no longer have to revise their rate publications each time their stations changed.

In this way, the OPSL became what is called a governing publication. The OPSL's statement of rail station geography governs all rate publications that refer to the OPSL.

Today, the OPSL is the governing station publication for thousands of rate publications and also for many more thousands of contracts for the shipment of goods by rail. Participating carriers use the OPSL as their governing station publication. Shippers, transportation carriers, brokers and consultants subscribe to the OPSL to learn the latest changes in station geography.

The ICC Termination Act, which eliminated the ICC and the filing of tariffs, does not alter the OPSL's value as a governing publication. Carriers still must distribute or publish rates, and, if anything, there is now an even greater need for a central geography source for all rail rate publications.

Rail Station Directory

The OPSL is more than just a list of stations or a publication. It is the most current and authoritative statement of rail stations and their attributes available anywhere. Every day, we communicate directly (both electronically and otherwise) with carriers all over North America. We solicit and receive information on the latest adoptions, mergers, short-line track acquisitions, station changes and facilities changes.

We also work hard to display our data in an intelligible and easy-to-use format. That's why we arrange station data in both alphabetical and geographical order and why we use a system of notes to display long or highly variable data.

Making Changes to Your OPSL Listing

When rail carriers wish to change any information appearing in the OPSL, simply make changes in the Centralized Station Master (CSM) via EDI or send a completed AD101 to OPSL@Railinc.com

If you need help in making a change contact

OPSL@RAIL INC.com

or

Customer Service Center
RAILINC
7001 Weston Parkway - Suite 200
Cary, NC 27513
TEL 800-544-7245
FAX 919-651-5410

The OPSL Publication Cycle

Once a year, in March, all current OPSL stations are compiled in one volume called a "reissue". Thereafter, changes to station information are reflected in OPSL supplements. These supplements are published on the 1st and the 15th of each month. At least 24 are published before the next reissue the following March.

To find information about a particular station, first consult the reissue, and then consult all outstanding active supplements.

To prevent the task of consulting supplements from becoming too burdensome, from time to time, certain outstanding supplements are "consolidated" into one supplement. Changes in previous supplements are incorporated into the consolidated supplement and the previous supplements are canceled.

On the cover of each supplement, we list outstanding supplements. In checking a station, you only need to consult the reissue and those supplements listed on the front of the most recent supplement as being current.

For example, on the cover of an OPSL Supplement you might find something like this phrase:

Supplements 6, 12, 18, 20, 21, 22 and 23 contain all changes.

Supplements 6, 12, and 18 are consolidated supplements. Supplements 21, 22 and 23 are normal supplements.

How the OPSL Is Organized

The OPSL is organized into six principal sections, with subsections:

- ☐ Participating Carriers
- ☐ Alphabetical-Freight
- ☐ Geographical
- ☐ Junctions and Interchanges
 - IRF Junctions by Location

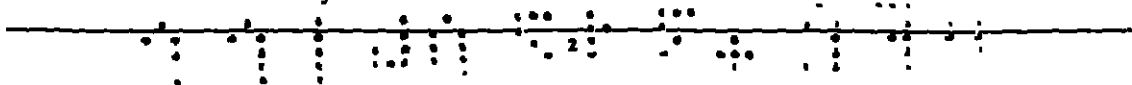


EXHIBIT 3

OFFICIAL RAILROAD STATION LIST™

ISSUED
MARCH 1, 2004

EFFECTIVE
MARCH 15, 2004

OPSL™ 6000-Y
(Cancels OPSL 6000-X)

Includes National Rate Basis™ and Centralized Station Master Data

- ◆ A complete list of over 40,000 rail freight stations on more than 600 carriers in the U.S., Canada and Mexico
- ◆ Official Rate Basis Points
- ◆ Official Centralized Station Master Data
- ◆ Rating ZIP Codes
- ◆ Official revenue-capable interchange data from Industry Junction File
- ◆ Junction Rule 260 and Interchange points
- ◆ Standard Point Location Codes
- ◆ Freight Station Accounting Codes
- ◆ Freight Handling facilities and restrictions
- ◆ Station Switch Limit information

Anthony J. Will
Issuing Officer

7001 Weston Parkway
Suite 200
Cary, NC 27513
(800) 544-7245
FAX: (919) 651-5410
E-mail: OPSL@railinc.com



and

343

EXHIBIT 4

88543

OPPENHEIMER WOLFF & DONNELLY

Two Prudential Plaza
45th Floor
150 North Stetson Avenue
Chicago, IL 60601-6710

(312) 616-1800
FAX (312) 616-5800

William C. Sippel
(312) 616-5874

December 20, 1996



Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Docket AB 227 (Sub-No. 8X)
Wheeling & Lake Erie Railway Company --
Abandonment Exemption -- In Huron County, Ohio

Dear Secretary Williams:

This letter is to advise the Board that pursuant to the exemption granted to Wheeling & Lake Erie Railway Company ("W&LE") in the above proceeding, W&LE today consummated the abandonment of its Milan Branch in Huron County, Ohio.

W&LE would like to thank the Board and the Board's staff for expediting its consideration of W&LE's petition. Conversion of these unused assets to cash through sale of the right-of-way to the City following abandonment will provide W&LE with a much-needed infusion of cash at a critical time when its largest customer remains shut-down due to a labor strike.

Respectfully submitted,


William C. Sippel
Attorneys for
Wheeling & Lake Erie Railway Company

WCS lmd

cc Mr. Joseph L. Detmar
ENTERED
Office of the Secretary

DEC 26 1996

4 Part of
Public Record

Brussels

Chicago

Minneapolis

New York

Paris

Saint Paul

Washington, DC

EXHIBIT 5

LEXSEE 52 FR 45509

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31155]

52 FR 45509

November 30, 1987

Seminole Gulf Railway, L.P.; Exemption to Acquire and Operate -- CSX Transportation, Inc.

TEXT: Decided: November 13, 1987

Seminole Gulf Railway, L.P. (LP), a noncarrier, has filed a notice of exemption to acquire and operate CSXT Transportation, Inc.'s lines of railroad between Arcadia (M.P. SVC 883.0) and Vanderbilt Beach (M.P. AX 990.689), and between Oneco (M.P. SW 875 0) and Venice (M.P. SW 904.425), all in the State of Florida. n1

n 1 The common control of L.P. and a nonconnecting carrier, Bay Colony Railroad Corporation, is the subject of a notice of exemption filed pursuant to 49 CFR 1180.2(d)(2) in Finance Docket No. 31154 that is being served and published in the Federal Register concurrently with this notice

Comments must be filed with the Commission and served on Applicant's representative, William P. Quinn, Esquire, Rubin, Quinn & Moss, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106, (215) 925-8300. This transaction will involve the issuance of securities by L.P. which, upon operation of the line, will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-27291 Filed 11-27-87; 8:45 am]

BILLING CODE 7035-01-M

EXHIBIT 6

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURTFOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001ENTRY/FEE BOOK: 112 PAGE: 207
BOOK: 0 PAGE: 0
BOOK: 0 PAGE: 0-----
ATTORNEYS-----
PARTIES5102-70 WILLIAM B KEATON
126 W SECOND ST
RUSHVILLE IN 46173
765-932-3947PLAINTIFF(S)
MORRISTOWN GRAIN CO INC5102-70 WILLIAM B KEATON
126 W SECOND ST
RUSHVILLE IN 46173
765-932-3947

HONEY CREEK RAILROAD INC

4177-49 THEODORE BLANFORD
4TH FLOOR 54 MONUMENT CIRCLE
INDIANAPOLIS IN 46204
317-632-4402DEFENDANT(S)
FARMLAND INSURANCE
%DAVID COLBURN
9555 DELEGATES ROW
INDIANAPOLIS IN 46240136-49 MICHAEL E SIMMONS
54 MONUMENT CIRCLE STE 400
INDIANAPOLIS IN 46204
317-632-44024177-49 THEODORE BLANFORD
4TH FLOOR 54 MONUMENT CIRCLE
INDIANAPOLIS IN 46204
317-632-4402NATIONWIDE AGRIBUSINESS INSURANCE
%CT CORP SYSTEM
36 S PENNSYLVANIA ST STE 700
INDIANAPOLIS IN 46204136-49 MICHAEL E SIMMONS
54 MONUMENT CIRCLE STE 400
INDIANAPOLIS IN 46204
317-632-44027879-49 ROBERT S HULETT
2400 ONE INDIANA SQUARE
INDIANAPOLIS IN 46204
317-636-5401DASEKE INSURANCE AGENCY INC
%WILLIAM WILLARD
602 OAK BLVD WEST DR
GREENFIELD IN 461403584-49 JOHN D COCHRAN JR
HACKMAN McCLARNON HULETT & CRACRAFT
2400 ONE INDIANA SQUARE
INDIANAPOLIS IN 46204
317-636-5401

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

14991-34 STEPHEN C WHEELER
11711 N PENNSYLVANIA STE 250
CARMEL IN 46032
317-575-7979

NOTICE
ELEVATORS MUTUAL

FINANCIAL INFO

PAYOR: MORRISTOWN GRAIN CO INC
COURT COSTS-STATE \$70.00
COURT COSTS-COUNTY \$30.00
DOCUMENT STORAGE FEE \$2.00
AUTOMATED RECORD KEEPING \$2.00

CHRONOLOGICAL SUMMARY OF FILINGS AND PROCEEDINGS

11/13/2001 Notice: N

RJO: N

APPEARANCE and COMPLAINT filed by William Keaton for Morristown Grain Co. Summons & Complaint issued to Marion Co Sheriff for service on Farmland Insurance and Nationwide Agribusiness Insurance Co; also issued to Hancock Co Sheriff for service on Daseke Insurance Agency. jg

11/28/2001 Notice: N

RJO: N

Marion Co Sheriff returns Summons with service to Nationwide Agribusiness Insurance Co by leaving a copy on 11-26-01. jg

11/28/2001 Notice: N

RJO: N

Marion Co Sheriff returns Summons issued to Farmland Insurance with Judy Green signing for service on 11-26-01. jg

11/30/2001 Notice: N

RJO: N

Hancock Co Sheriff returns Summons with service to Daseke Insurance Agency by leaving a copy on 11-21-01 and mailing a copy. jg

11/30/2001 Notice: N

RJO: N

Alias Summons issued by certified mail to Farmland Insurance. jg

12/03/2001 Notice: N

RJO: N

APPEARANCE and MOTION FOR ENLARGEMENT OF TIME filed by Robert S. Hulett and John D. Cochran, Jr. on behalf of Defendant, Daseke Insurance Agency.

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

jh

12/04/2001 Notice: N

RJO: Y

Daseke Insurance Agency, Inc.'s Motion for Enlargement of Time sustained per Order (RJO). Time enlarged to 1-10-02. jh

12/05/2001 Notice: N

RJO: N

Certified mail receipt returned satisfied to Farmland Insurance, with Keith Albrecht signing on 12-3-01. jg

12/07/2001 Notice: N

RJO: N

APPEARANCE; MOTION FOR ENLARGEMENT OF TIME; and, JURY TRIAL REQUEST filed by Theodore J. Blanford on behalf of Defendants, Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company, by certified mail dated 12-6-01. jh

12/11/2001 Notice: N

RJO: Y

Order for Enlargement of Time entered (RJO). Defendants Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company shall have to 1-10-02 to file responsive pleadings. jh

01/11/2002 Notice: N

RJO: N

DEFENDANT DAESKE INSURANCE AGENCY, INC'S ANSWER AND AFFIRMATIVE DEFENSES filed by certified mail dated 1-10-02. jh

01/11/2002 Notice: N

RJO: N

ANSWER AND COUNTERCLAIM FOR DECLARATORY JUDGMENT filed by Defendants Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company, by certified mail dated 1-10-02. jh

01/22/2002 Notice: N

RJO: N

ANSWER TO COUNTERCLAIM filed by Morristown Grain Company Incorporated and Honey Creek Railroad, Inc., by certified mail dated 1-18-02. jh

04/17/2002 Notice: N

RJO: N

MOTION FOR EXTENSION OF TIME filed by Plaintiffs and Counter-Defendants, Morristown Grain Company Incorporated and Honey Creek Railroad, Inc., by certified mail dated 4-16-02. jh

04/18/2002 Notice: N

RJO: N

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

Plaintiffs' Motion for Enlargement of Time sustained per Order (RJO).
Time enlarged to 5-31-02. jh

05/14/2002 Notice: N

RJO: Y

MOTION FOR PRE-TRIAL CONFERENCE filed by Plaintiffs and Counter-Defendants,
Morristown Grain Company Inc. and Honey Creek Railroad, Inc., by certified
mail dated 5-13-02.
Pre-trial conference set 7-5-02 at 2:00 p.m., per Order (RJO). jh

05/28/2002 Notice: N

RJO: N

SECOND MOTION FOR EXTENSION OF TIME filed by Plaintiffs and Counter-
Defendants, Morristown Grain Company Inc. and Honey Creek Railroad, Inc.
by certified mail dated 5-24-02. jh

05/29/2002 Notice: N

RJO: Y

Order for Enlargement of Time entered (RJO). Plaintiffs granted until
7-1-02 to submit its responses to Defendants' Request for Production of
Documents and Defendants' Interrogatories to Plaintiffs. jh

07/05/2002 Notice: N

RJO: N

DEFENDANT DAESKE INSURANCE AGENCY, INC.'S MOTION TO COMPEL; DEFENDANT'S
FIRST SET OF INTERROGATORIES TO PLAINTIFFS; and, PLAINTIFFS' RESPONSE TO
DEFENDANT'S DAESKE INSURANCE AGENCY, INC.'S FIRST SET OF INTERROGATORIES
TO PLAINTIFFS filed by Defendant, Daeske Insurance Agency. ss

07/05/2002 Notice: N

RJO: Y

Appearances: Plaintiffs, by Wm. Keaton; Defendant, Nationwide Agribusiness
by Ted Blandford; and Defendant, Daseke Insurance by John Cochran, Jr., for
Pre Trial Conference July 5, 2002. Motion to Compel and additional
Pre-Trial Conference set for Sept. 20, 2002 at 1:00 p.m., by phone unless
Motion to Compel requires otherwise. Pre-Trial Order entered. (RJO) bas

09/20/2002 Notice: A

RJO: N

Appearances: Plaintiffs, by counsel, William Keaton; Defendant,
Daseke Ins. Agency, Inc., by counsel, John Cochran, Jr. and Ellen
Morrison Townsend. Defendants, Farmland Ins. and Nationwide Agribusiness
Ins., and counsel, appear not. Pre-Trial Conference held, via telephone.
By agreement, Pre-Trial Conference continued to 2-21-03, at 2:00 p.m.,
to be held by phone. mj

09/30/2002 Notice: N

RJO: N

MOTION FOR ENLARGEMENT OF TIME filed by Defendant, Daseke Insurance

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

Agency, Inc., by certified mail dated 9-25-02. jh

10/01/2002 Notice: N

RJO: Y

Order on Motion for Enlargement of Time entered (RJO). Defendant, Daseke Insurance Agency, Inc., granted to 12-11-02 to respond to Plaintiffs' discovery requests. jh

12/10/2002 Notice: N

RJO: N

MOTION FOR ENLARGEMENT OF TIME filed by Defendant, Daseke Insurance Agency, Inc., by certified mail dated 12-9-02. jh

12/12/2002 Notice: N

RJO: Y

Order on Motion for Enlargement of Time entered (RJO). jh

01/02/2003 Notice: N

RJO: N

MOTION FOR ENLARGEMENT OF TIME filed by Defendant, Daseke Insurance Agency, Inc., by certified mail dated 12-31-02. jh

01/03/2003 Notice: N

RJO: Y

Defendant, Daseke Insurance Agency, Inc.'s Motion for Enlargement of Time sustained per Order (RJO). jh

02/21/2003 Notice: N

RJO: N

Ted Blandford reports that counsel conducted a pre-trial conference by phone this date. He reports that the case is moving along and they will contact the Court if they need anything. jh

05/22/2003 Notice: N

RJO: N

MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' INTERROGATORIES AND REQUEST FOR PRODUCTION filed by Defendants, Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company, by certified mail dated 5-21-03. jh

05/27/2003 Notice: N

RJO: Y

Order for Extension of Time to Respond to Plaintiff's Interrogatories and Request for Production entered (RJO). jh

01/20/2004 Notice: N

RJO: N

MOTION FOR PRE-TRIAL CONFERENCE filed by Plaintiffs. jh

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

01/21/2004 Notice: N

RJO: Y

Pre-trial conference set 4-30-04 at 3:00 p.m., per Order (RJO). jh

04/30/2004 Notice: A

RJO: N

Appearances: Plaintiff by counsel, William Keaton; Defendants, Farmland Insurance and Nationwide Agribusiness Insurance, by counsel, Theodore Blanford; Defendant, Daseke Insurance Agency, by counsel John Cochran. Pre-trial conference conducted by phone. Further pre-trial conference set 7-30-04 at 1:30 p.m. jh

07/02/2004 Notice: N

RJO: Y

MOTION TO COMPEL DISCOVERY filed by Plaintiff, by certified mail dated 7-1-04.

Order Compelling Discovery entered (RJO). jh

07/09/2004 Notice: N

RJO: N

RESPONSE TO PLAINTIFFS' MOTION TO COMPEL filed by Defendant, Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company. jh

07/30/2004 Notice: A ADR

RJO: N

Appearances: Plaintiffs by counsel, William Keaton; Defendant, Farmland Insurance, by counsel Theodore Blanford; Defendant, Daseke Insurance, by counsel, John Cochran. Pre-trial conference conducted by phone. Counsel agree to complete discovery within 120 days and mediation within 120 days thereafter. jh

09/27/2004 Notice: N

RJO: N

APPEARANCE filed by Michael E. Simmons on behalf of Farmland Insurance Company and Nationwide Agribusiness Insurance Company. kk

04/07/2005 Notice: N

RJO: N

ELEVATORS MUTUAL'S OBJECTION TO DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS FROM A NON-PARTY AND MOTION FOR PROTECTIVE ORDER filed by certified mail dated 4-6-05. jh

04/13/2005 Notice: A

RJO: N

Defendant granted 15 days to file any response to Elevators Mutual's Motion for Protective Order or same may be summarily granted. jh

05/03/2005 Notice: N

RJO: Y

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

Order on Elevators Mutual's Objection to Defendant's Request for
Production of Documents From a Non-Party and Motion for Protective Order
entered (RJO). jh

05/25/2005 Notice: N

RJO: N

Richard Kraege to serve as mediation in this matter, per letter. jh

06/15/2005 Notice: N

RJO: N

Mediation scheduled 8-15-05, per correspondence received from mediator.
jh

09/21/2005 Notice: N

RJO: N

Mediation scheduled 10-25-05, per letter. jh

10/06/2005 Notice: N

RJO: N

Mediation rescheduled 11-15-05, per letter. jh

11/18/2005 Notice: N

RJO: N

Correspondence received from Richard Kraege, Mediator, indicating matter
was settled as to Defendant Daseke Insurance Company ONLY. All other
claims remain unsettled. jh

01/18/2006 Notice: N

RJO: Y

STIPULATION OF DISMISSAL AS TO DEFENDANT DAESKE INSURANCE AGENCY, INC.
filed by Plaintiffs and Defendant, Daeske Insurance Agency, Inc.
Order of Dismissal as to Defendant Daeske Insurance Agency, Inc. entered
(RJO). jh

01/23/2006 Notice: N

RJO: Y

MOTION FOR PRE-TRIAL CONFERENCE AND FOR TRIAL SETTING filed by Plaintiffs
and Counter-Defendants, Morristown Grain Company.
Order Setting Pre-trial Conference and Trial entered (RJO). Pre-trial
conference set 5-5-06 at 2:00 p.m.; and, jury trial set 5-22-06 at
9:00 a.m. jh

02/06/2006 Notice: N

RJO: Y

MOTION FOR CONTINUANCE OF TRIAL (5-22-06) filed by Plaintiffs.
Motion sustained and trial continued to 8-7-06 at 9:00 a.m., per Order
(RJO). jh

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

05/05/2006 Notice: N

RJO: Y

Appearances: Plaintiff by counsel, William Keaton; Defendants, Farmland Insurance and Nationwide Agribusiness Insurance, by counsel, Theodore Blanford. Pre-trial conference held. Pre-trial Order entered (RJO). Final pre-trial conference, 7-27-06 at 1:00 p.m.; and, jury trial, 8-7-06 at 9:00 a.m. jh

06/16/2006 Notice: N

RJO: N

MOTION FOR PARTIAL SUMMARY JUDGMENT; FARMLAND INSURANCE COMPANY'S BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT; and, DESIGNATION AND TENDER OF EVIDENCE filed by Defendant, Farmland Insurance Company. jh

06/16/2006 Notice: N

RJO: Y

Summary Judgment Scheduling Order entered (RJO). Hearing on Motion for Partial Summary Judgment set for 8-7-06, at 9:00 a.m. Pre-Trial Conference of 7-27-06 and Jury Trial of 8-7-06 vacated. mj

07/14/2006 Notice: N

RJO: N

MOTION FOR PRE-JUDGMENT INTEREST; MOTION TO PUBLISH AND FILE DEPOSITION OF WILLIAM E. SMITH AND FILE DISCOVERY RESPONSES OF DEFENDANTS, FARMLAND INSURANCE OF DES MOINES, IOWA AND NATIONWIDE AGRIBUSINESS INSURANCE COMPANY; DESIGNATION AND TENDER OF EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT; PLAINTIFFS' BRIEF IN RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT; AFFIDVIT OF WILLIAM B. KEATON; AFFIDAVIT OF WILLIAM E. SMITH; and, AFFIDAVIT OF LYNDIA STERRETT filed by Plaintiffs. jh

07/18/2006 Notice: N

RJO: Y

Order for Publication and Filing of Deposition of William E. Smith and Discovery Responses of Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company entered (RJO). DEFENDANTS FARMLAND INSURANCE OF DES MOINES, IOWA AND NATIONWIDE AGRIBUSINESS INSURANCE COMPANY'S ANSWERS TO PLAINTIFFS' INTERROGATORIES filed. jh

08/01/2006 Notice: N

RJO: N

FARMLAND INSURANCE COMPANY'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT and MOTION TO STRIKE filed by Defendant, Farmland Insurance Company, by certified mail dated 7-31-06. jh

08/07/2006 Notice: N

RJO: N

Appearances: Plaintiff, by counsel, William Keaton; Defendant, by

CHRONOLOGICAL CASE SUMMARY
CIVIL PLENARY, HENRY COUNTY CIRCUIT COURT

FOR CAUSE NO: 33C01-0111-CP-358
MORRISTOWN GRAIN V FARMLAND IN
THE HONORABLE MARY G WILLIS

ACTION: COMPLAINT ON CIVIL PLENARY

DATE FILED: 11/13/2001
ORIG FILE DT: 11/13/2001

counsel, Ted Blanford. Summary Judgment hearing called. Arguments submitted. Ruling taken under advisement. mj

08/09/2006 Notice: N

RJO: N

Transcripts and exhibits of deposition of William E. Smith filed by Ted Blanford, counsel for Defendants, Farmland Insurance and Nationwide Agribusiness Insurance. jh

08/16/2006 Notice: N

RJO: Y

Order on Partial Summary Judgment entered (RJO). mj

09/18/2006 Notice: N

RJO: N

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR PRE-JUDGMENT INTEREST filed by Defendants, Farmland Insurance of Des Moines, Iowa and Nationwide Agribusiness Insurance Company, by certified mail dated 9-15-06. jh

11/03/2006 Notice: N

RJO: N

STIPULATION OF DISMISSAL filed by the parties. jh

11/06/2006 Notice: N

DISPOSED: DI RJO: Y

Order of Dismissal entered (RJO). Cause dismissed with prejudice. jh

EXHIBIT 7

STATE OF INDIANA)
) SS
COUNTY OF HENRY)

IN THE HENRY COUNTY CIRCUIT COURT

CAUSE NO 33C01-0111-CP-358

MORRISTOWN GRAIN COMPANY,)
INCORPORATED and)
HONEY CREEK RAILROAD, INC.,)
)
 Plaintiffs,)

v.)

FARMLAND INSURANCE OF DES)
MOINES, IOWA,)
NATIONWIDE AGRIBUSINESS)
INSURANCE COMPANY and)
DASEKE INSURANCE AGENCY,)
)
 Defendants.)

FARMLAND INSURANCE OF DES)
MOINES, IOWA and)
NATIONWIDE AGRIBUSINESS)
INSURANCE COMPANY,)
)
 Counter-Claimants,)

v.)

MORRISTOWN GRAIN COMPANY,)
INCORPORATED and)
HONEY CREEK RAILROAD, INC.,)
)
 Counter-Defendants)

FILED

JUN 16 2006


CLERK HENRY CIRCUIT COURT

FARMLAND INSURANCE COMPANY'S
BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Comes now Defendant Farmland Insurance Company ("Farmland") by counsel, and moves this Court, pursuant to Indiana Trial Rule 56, for entry of judgment in its favor and against Morristown Grain Company, Inc. ("MGC") with respect to Morristown Grain's breach of contract alleged in Count I, and bad faith causes of action alleged in Counts II and IV of its Complaint. Farmland also moves for entry of judgment in its favor and against MGC with respect to MGC's policy in that the loss on January 4, 2000 is limited to actual Cash value instead of replacement cost. Finally, MGC's request for lost business profits is limited to the time period after the January 4, 2000 loss until the time when MGC voluntarily shut down the facility. In support of its motion for partial summary judgment, Farmland states as follows:

I. FACTUAL BACKGROUND

Morristown Grain Company, Inc. is a multi-location grain buyer/storage business with several locations in mid-central Indiana. The facility at issue is in Sulphur Springs, located in Henry County, Indiana. William E. Smith is the President, Chairman of the Board and sole shareholder of MGC. Farmland Insurance Company issued a Commercial Grain Storage policy to MGC, with policy number CMG0853086 (See Policy, Exh. B). The policy was renewed with an effective date from December 1, 1999 through February 21, 2000, which was in effect during the two losses which are the subject of the Complaint by MGC (See Policy, Exh. B). Farmland sent a notice to MGC on or about December 12, 1999, to inform MGC that the policy would not be renewed following its expiration on February 21, 2000 (See Exh. E). On December 4, 1999 a grain storage bin (bin #8) at the Sulphur Springs location cracked at the lower rings and spilled a portion of the corn contents

onto the ground (See Depo of William E. Smith, Exh. C, p. 118, lns. 10-13, 20-25; p. 122, lns. 15-17). MGC submitted a claim under the CommercialGard policy, which was denied on the basis that the occurrence was not a covered "collapse", but was instead an excluded "cracking". That claim was identified as 16165 in the Farmland system. (See Exh D, p. 1)

On January 4, 2000, a second grain storage bin (bin #9) at the Sulphur Springs facility suffered damage by way of collapse. MGC submitted a claim, which was accepted as a covered event, under claim number 17435. However, the parties were soon in disagreement as to whether the insurance policy provided full replacement cost of the storage bin, or actual cash value less depreciation. In addition, the January 4, 2000 incident resulted in clean-up costs that exceeded the policy limits for that coverage.

On November 13, 2001, Morristown filed suit alleging breach of contract, negligence and bad faith in the claims handling of the two Sulphur Springs incidents. Farmland now seeks entry of judgment in its favor and against MGC with respect to MGC's breach of contract regarding the first loss on December 4, 1999, as an excluded loss under the policy, and summary judgment on the bad faith causes of action alleged as a result of both incidents at the Sulphur Springs facility. Additionally, Farmland is seeking a determination that the second loss of January 4, 2000, be limited to ACV, and that any lost income claimed by MGC be limited to the date that MGC decided to close the Sulphur Springs facility down voluntarily.

II. SUMMARY JUDGMENT STANDARD

A party is entitled to summary judgment if it has demonstrated the absence of a genuine issue of material fact as to a determinative issue. *Jarboe v Landmark Community Newspapers of Indiana, Inc* , 644 N E 2d 118, 123 (Ind. 1994)

The movant must designate sufficient evidence to foreclose reasonable inferences that may be made in favor of the non-movant and to eliminate any factual issues. *Butler v City of Peru*, 733 N.E 2d 912, 915 (Ind. 2000). Once the movant has sustained its burden of showing the absence of any material fact, the burden shifts to the non-movant to show that a genuine issue of material fact exists by establishing contrary evidence. *See Jarboe*, 644 N.E 2d at 123. A fact is “material” if it facilitates resolution of the motion *Penwell v. Western & Southern Life Ins. Co.*, 474 N E 2d 1042, 1044 (Ind Ct App 1985). Speculation cannot be construed as a fact for purposes of opposing summary judgment *Briggs v Finley*, 631 N E 2d 959, 964-65 (Ind App. 1994)

If no material facts are in dispute and the terms of the contract are unambiguous or any ambiguity can be resolved without a factual determination, the issue is a matter of law appropriate for the court to resolve *See Liberty Insurance Corp v Ferguson Steel Co , Inc* , 812 N.E.2d 228, 230 (Ind Ct. App 2004); and *Cinergy Corp. v St. Paul Surplus Lines Ins. Co.*, 838 N.E 2d 1104, 1107 (Ind. Ct. App. 2005). *See also Delaplane v Francis*, 636 N.E.2d 169, 171 (Ind. Ct. App. 1994) (construction of an insurance contract is a question of law for which summary judgment is particularly appropriate). Under Indiana law, it is proper to dispose of a bad faith claim by summary judgment where the facts warrant *See, e g , Freidline*, 774 N.E 2d at 39, 42-43; *Colley v Ind Farmers Mut Ins Group*, 691 N E 2d 1259, 1261 (Ind. App. 1998)

III. ARGUMENT

A. The December 4, 1999, Loss is Excluded from Coverage by Farmland as the Storage Bin "Cracked" and did not "Collapse" as Defined in the Policy

Farmland's CommercialGard Policy issued to MGC, with policy number CMG0853086, and was effective from December 1, 1999 through February 21, 2000, contained the following language

I B Definitions of Limitations of Perils

1 Under coverage I A 1. **Real Property and Business Personal Property** and coverage I.A.2. **Stock**, we insure against all risk of direct physical loss except

a We will not pay for loss, damage or expense caused by, resulting from, contributed to or aggravated by directly, or indirectly:

* * * *

(5) Rupture or bursting

(a) Due to expansion or swelling of any buildings or structures caused by or resulting from water.

(b) Of any building or structure caused by expansion or contraction of building or contents due to changes in temperature.

* * * *

b. We will not pay for loss, damage or expense caused by, resulting from, contributed to or aggravated by directly, or indirectly by the following causes, except ensuing loss by fire is covered unless otherwise excluded.

(1) Wear and tear; deterioration, rust, corrosion or erosion . . latent defect . . settling, cracking, shrinkage of sidewalks, driveways or pavements, foundations, walls, floors, roofs, or ceilings . .

* * * *

Except, ensuing loss by collapse is covered unless
otherwise excluded or caused by earthquake

VIII POLICY DEFINITIONS

THE FOLLOWING DEFINITIONS ARE MADE A PART OF THIS
POLICY.

* * * *

- 10 **Collapse** means an actual falling down or caving in of an insured building or structure or any part thereof. **Collapse** does not include settling, cracking, shrinkage, bulging, buckling, or expansion or damage caused by earthquake. (See Policy, Exh. B, pp. "Property Insurance – Pages 3 and 4 of 12" and "Policy Definitions – Page 1 of 8").

Under Indiana law, insurance contracts are subject to the same rules of interpretation as other contracts. *USA Life One Ins Co v Nuckolls*, 682 N.E.2d 534, 537-538 (Ind. 1997). When interpreting an insurance contract, courts must "ascertain and enforce the parties' intent as manifested in the insurance contract." *Burkett v. American Family Ins Group*, 737 N.E.2d 447, 452 (Ind. App. 2000). If the policy language is clear and unambiguous, it should be given its plain and ordinary meaning. *Meridian Mut Ins Co v. Auto-Owners Ins. Co*, 698 N.E.2d 770, 773 (Ind. 1998). Courts must also accept an interpretation of the policy language that "harmonizes the provisions rather than one which supports a conflicting version of the provisions." *Burkett v American Family Ins Group*, 737 N.E.2d at 452 (Ind. App. 2000). Courts may not rewrite an insurance contract. *American Family Mut Ins Co v Federated Mut. Ins Co*, 775 N.E.2d 1198,

1203 (Ind. App. 2002). Insurers may limit liability in any manner that is not inconsistent with public policy, and an exclusionary clause that is unambiguous is ordinarily entitled to enforcement *Hoosier Ins Co v Audiology Found*, 745 N.E 2d 300, 309 (Ind. App. 2001); *American Family Life Assur Co v Russell*, 700 N E 2d 1174, 1177 (Ind. App 1998)

Indiana law provides that insurers are free to limit liability by plainly expressing exceptions, exclusions or limitations in insurance policies and such restrictions are entitled to construction and enforcement so long as they are not inconsistent with public policy. *Allstate Ins Co. v. Boles*, 481 N.E 2d 1096, 1098 (Ind. 1985) “Policy terms are interpreted from the perspective of an ordinary policyholder of average intelligence,” and “an ambiguity does not exist merely because the parties proffer differing interpretations of the policy language.” *Burkett v American Family Ins Group*, 737 N E.2d at 452 (Ind. App 2000)

The Farmland policy in effect at the time of the December 4, 2000, loss by MGC clearly excludes from coverage any property damage which is the result of “cracking” or “bulging” of a wall Bin #8, which spilled corn onto the ground on December 4, 2000, did so due to cracking or a separation of the steel bin at a seam The bin did not collapse. Adjuster Rich Whaley with Farmland inspected bin #8 on December 6, 1999, two days after the loss. (See Exh D, p. 1) Whaley determined that the bin failure was due to “cracking of the lower two ring sections of the bin ” *Id* Photographs were taken of the bin by Whaley, which show that the bin had not collapsed, but that corn had spilled due to a separation of the steel seams. *Id*

In his deposition, William E. Smith with MGC referred to the damage to the bin as a result of a "separation in the seam". (See Depo of William E. Smith, Exh. D, p. 118, lns. 24-25) Mr. Smith also agreed that the bin had sustained a crack in it:

Q And can you see the crack in the bin? And I'm not sure which bin is cracked and where that grain came from. If you could point that out, that would be great

Mr. Smith I know where it is. I can show you

* * * *

Q. And that thing that is stuffed in there, is that what stopped the flow of grain?

Mr. Smith Yes. There is a little bulging right in here and a separation in the seam right in here.

Q. And when you said seam, you were pointing to a vertical line in the bin; right?

Mr. Smith Yes That's a bolt line.

* * * *

Q And did you ever get anybody out there to determine what the cause of this crack was?

Mr. Smith No No outside parties

(See Depo of William E. Smith, Exh. C, p. 118, lns. 10-13, 20-25; p. 122, lns. 15-17).

As a result of the exclusion for any loss, damage or expenses caused by the "cracking" or "bulging" of a wall, the December 4, 1999, failure of bin #8, is not a covered loss under the Farmland policy.

The *Magwerks* case does not support the plaintiffs contention that this loss was due to a “collapse”, which would be covered under the policy, except for certain exclusions for collapse due to cracking or bulging. In *Magwerks*, the insurer, Monroc Guaranty, denied coverage for a roof collapse at the Magwerks facility by claiming that the collapse was a result of wear and tear and decay. *Monroe Guaranty Ins Co v Magwerks Corp*, 829 N.E 2d 969, 971 (Ind. 2005). The Indiana Supreme Court affirmed the adoption of the “modern” definition of the term “collapse”. The Court determined that a majority of jurisdictions have determined that the term “collapse” is defined as a “substantial impairment of the structural integrity of the building or any part of a building.” *Id* at 972-973.

However, the policy in the *Magwerks* case did not specifically define the term “collapse”. Unlike the *Magwerks* case, the Farmland policy in the present case defines “collapse” as “an actual falling down or caving in of an insured building or structure or any part thereof. Collapse *does not include* settling, cracking, shrinkage, bulging, buckling, or expansion or damage caused by earthquake.” (Emphasis added, See Policy, Exh B, p. “Policy Definitions – Page 1 of 8”). Indiana law permits insurers to limit their liability through the use of exclusionary clauses. *Hoosier Ins. Co v. Audiology Found.*, 745 N.E.2d at 309 (Ind App. 2001), *American Family Life Assur. Co. v. Russell*, 700 N.E.2d at 1177 (Ind. App. 1998). Courts may not extend insurance coverage beyond that provided by the language of the insurance contract. See, e.g., *Gallant Ins. Co v Oswald*, 762 N.E.2d 1254, 1262 (Ind App. 2002)

Therefore, the *Magwerks* case does not create coverage for MGC's December 4, 1999 incident, as the definition of the term collapse is defined in the Farmland policy, and clearly excludes from the definition of collapse any cracking or bulging. The damage to bin #8 on this occasion was clearly limited to a crack or bulge in the seam of the grain bin. For these reasons, Farmland is entitled to an entry of judgment that MGC is not covered for the loss of December 4, 1999.

B. Farmland is Entitled to Summary Judgment with Respect to MGC's Claim for Bad Faith for the December 4, 1999 Loss, as Farmland had a Reasonable Basis to Deny the Claim

Bad faith is an intentional tort. Indiana courts have found that, for an insurer to breach its duty to act in good faith, the policyholder must show by clear and convincing evidence that the insurer acted with a state of mind reflecting dishonest purpose, moral obliquity, furtive design or ill will. *See, Monroe Guaranty Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 977 (Ind. 2005), *Johnston v. State Farm Mutual Automobile Ins. Co.*, 667 N.E.2d 802, 805 (Ind. Ct. App. 1996), *Indiana Insurance Co. v. Plummer Power & Mower Tool Rental, Inc.*, 590 N.E.2d 1085, 1093 (Ind. Ct. App. 1992). "Poor judgment or negligence do not amount to bad faith, the additional element of conscious wrongdoing must be present." *Colley*, 691 N.E.2d at 1261, *see also, Erie Ins. v. Hickman*, 622 N.E.2d 515, 518 (Ind. 1993) (holding that lack of a diligent investigation alone is insufficient to support a claim of bad faith).

The clear and convincing standard of proof is stricter than the preponderance of the evidence standard. As noted by the Indiana Supreme Court, the clear and convincing standard is frequently imposed in civil cases where the wisdom of experience has demonstrated the need for greater certainty, and where the higher standard is required to sustain claims which have serious social

consequences or harsh and far reaching effects. *Travelers Indem Co v. Armstrong*, 442 N.E.2d 349, 360-61 (Ind. 1982). Under Indiana law, an insurer is entitled to a rebuttable presumption that it acted in good faith in the handling of a claim. *Burleson v Illinois Farmers Ins Co* , 725 F. Supp. 1489, 1494 (S D Ind. 1989); *Carroll v Statesman Ins Co.*, 493 N.E 2d 1289, 1293 (Ind. Ct. App 1986) *aff'd in part* 509 N E.2d 825, 827 (Ind. 1987) To defeat summary judgment, MGC must proffer evidence sufficient for a trier of fact to find that bad faith was proven by clear and convincing evidence. *See, Erie Ins Co* , 622 N.E.2d at 521 (discussing standard). MGC cannot meet this burden.

Farmland clearly had a reasonable basis to deny the December 4, 1999 claim as a result of the inspection by adjuster Rich Whaley and the exclusionary language contained in the policy. The evidence establishes that there is no genuine issue of fact concerning MGC's bad faith claim for the December 4, 1999 loss, and that Farmland is entitled to judgment against MGC as a matter of law with respect to Count II of MGC's Complaint

C. MGC's Claim for the January 4, 2000 Loss is Limited to Actual Cash Value and Not Replacement Cost

MGC's claim for damages as a result of the January 4, 2000, bin collapse are limited to that of actual cash value and not replacement costs pursuant to the terms of the policy. The policy provides under Section I.A d. that:

LOSS SETTLEMENT CLAUSE: We will settle losses on actual cash value basis as defined in Section I.C.1.

(See Exh B, p. "Property Insurance – Page 2 of 12"). Actual cash value is defined as the replacement cost of the property damaged or destroyed at the time of loss, less depreciation. (See Exh. B, p. "Policy Definitions – Page 1 of 8") The policy did contain a replacement cost endorsement, endorsement CMGB231 1195 for specified buildings listed on the schedule. This provision would allow MGC to ignore depreciation when determining what the replacement cost would be for bin #9. However bin #9 which collapsed at the Sulfur Springs location on January 4, 2000 was not a covered building pursuant to the terms and conditions of the replacement cost endorsement, and therefore cost of replacement without deduction for depreciation was not available to MGC.

The replacement cost endorsement lists several items under Location No. 3, which is the Sulphur Springs facility (See Exh B, p. 2, "Replacement Cost Coverage Endorsement") The only bins listed on the endorsement are "OH BINS" which applies to Overhead Bins at the Sulphur Springs facility, and not to bin #9. The map shows that the overhead bins are listed as item #15, and are located in a different location than that of the steel bins, which are item #11 on the map for this facility. Mr. Smith also agreed that the policy was an actual cash value policy with respect to the January 4, 2000 loss.

Q. So as to whether or not -- let me rephrase this. Do you agree now as we sit here that the policy for January 4th of 2000 was an actual cash value policy as opposed to replacement cost?

Mr. Smith. That's the way it's written.

(See Depo. of William E. Smith, Exh C, p. 236, lns 7-11)

As a result, bin #9 is limited to the actual cash value which is defined in the policy as the replacement cost minus depreciation. MGC is not entitled to reimbursement for replacement cost only, and must account for depreciation. Farmland is entitled to a determination by this Court that the value of bin #9 is limited to actual cash value as defined in the policy.

D. Farmland Is Entitled to Judgment as a Matter of Law with Respect to the Second Bad Faith Claim as Farmland Complied with Three Different Indiana Statutes in Non-Renewing MGC's Policy and Also Had Attempted to Settle the January 4, 2000 loss with MGC

1 The Farmland policy was limited to a policy period of 12-1-99 to 2-21-00 when it was purchased

Farmland is also entitled to judgment as a matter of law with respect to MGC's claim for bad faith regarding the alleged cancellation of the policy and failure to promptly settle this claim, specifically Count IV of the Complaint. Farmland decided not to renew the policy due to its unavailability to obtain reinsurance for the MGC risk. Farmland complied with three Indiana statutes, IC 27-1-31-2, IC 27-1-31-2.5, and IC 27-1-31-3 regarding the cancellation or nonrenewal of the MGC policy. The compliance with any *one* of the three statutes would eliminate MGC's bad faith claim. Also, Farmland and MGC disagreed over the value of the bin that collapsed and MGC's lost income. The parties could not reach an agreement as to specific numbers to settle this claim. As a result, MGC cannot establish its burden and demonstrate by clear and convincing evidence that Farmland acted in bad faith in cancelling the policy and failed to promptly settle the claim.

Indiana Code 27-1-31-2, "Grounds for cancellation; notice of cancellation" provides that.

- (a) An insurer may not cancel a policy of insurance that the insurer has written that has been in effect more than ninety (90) days unless:
 - (1) the insured under the policy has failed to pay the premium,
 - (2) there is a substantial change in the scale of risk covered by the policy;
 - (3) the insured has perpetrated a fraud or material misrepresentation upon the insurer;

- (4) the insured has failed to comply with reasonable safety recommendations; or
- (5) reinsurance of the risk associated with the policy has been cancelled.

(b) An insurer shall provide a written notice of cancellation to a person insured under a policy issued by the insurer at least

- (1) forty-five (45) days before cancelling the policy for any reason set forth in subsection (a)(2), (a)(4), or (a)(5);
- (2) twenty (20) days before cancelling the policy for the reason set forth in subsection (a)(3); or
- (3) ten (10) days before cancelling the policy for the reason set forth in subsection (a)(1).

In the present matter, Farmland sent a "Notice of Cancellation or Nonrenewal" to MGC on December 13, 1999. (See Exh E). The notice stated that the policy, CMG853086, would expire on February 21, 2000 at 12.01 A M *Id* The reason for the cancellation was listed as "Loss of Reinsurance on Risk". *Id*. This cancellation notice was mailed out 70 days prior to the expiration of the policy The cancellation notice was a formality because the policy that was purchased by MCG had a policy term that would expire on February 21, 2000. When the policy was purchased the term listed on the declaration page shows the policy period from "12/01/99 – 02/21/00". (See Exh. F). Mr Smith agreed that the policy was limited to this time period when he purchased it:

Q If, in fact, this policy was basically a three-month policy written from 12-01-99 to 2-21-2000, this declaration sheet, if it came from the policy, would have informed you, had you read it, that the policy was a three-month policy, correct?

Mr Smith Yes.

(See Depo of William E Smith, Exh C, p. 348, lns. 6-12). Farmland sent out the Notice of Cancellation as a safeguard to comply with Indiana law

Indiana Code 27-1-31-2, only applies to policies that have been in effect for more than ninety days. Here, the Farmland policy had only been in effect for 13 days (December 1 to December 13) when the notice of cancellation was sent. Although this section of the code is inapplicable, Farmland nonetheless complied with IC 27-1-31-2(b)(1) by sending out notice of the cancellation well ahead of the 45 days required before the policy expires.

Indiana Code 27-1-31-2.5, "Notice of cancellation" states that:

An insurer may cancel a policy of insurance that the insurer has written that has been in effect ninety (90) days or less by providing a written notice of cancellation to a person insured under the policy at least

- (1) ten (10) days before cancelling if an insured has failed to pay a premium,
- (2) twenty (20) days before cancelling if the insured has perpetrated a fraud or material misrepresentation upon the insurer, or
- (3) thirty (30) days before cancelling for any other reason.

This section of the code does apply to the present situation as the policy had been in effect less than ninety days. Nonetheless, Farmland complied with this section of the law by sending out the notice well ahead of the thirty days required before cancellation for "any other reason."

Finally, IC 27-1-31-3, "Notice of nonrenewal" provides that

(a) If an insurer refuses to renew a policy of insurance written by the insurer, the insurer shall provide written notice of nonrenewal to the insured

- (1) at least forty-five (45) days before the expiration date of the policy, if the coverage provided is for one (1) year, or less, or
- (2) at least forty-five (45) days before the anniversary date of the policy, if the coverage provided is for more than one (1) year.

(b) A notice of nonrenewal is not required if

- (1) the insured is transferred from an insurer to an affiliate of the insurer for future coverage as a result of a merger, an acquisition, or a company restructuring;
- (2) the transfer results in the same or broader coverage, and
- (3) the insured approves the transfer

Should MGC interpret the notice as a nonrenewal notice instead of a cancellation notice, Farmland complied with the statute regarding notices of nonrenewal as well. IC 27-1-31-3(a)(1) states that the nonrenewal notice must be sent at least 45 days before the policy expires, if the coverage is for one year or less. Farmland sent the notice to MGC, 70 days prior to the expiration of the policy, thus complying with this section of the code. As a result of Farmland's compliance with all three of these statutes regarding cancellation and nonrenewal, summary judgment with respect to MGC's claim that Farmland "wrongfully cancelled" its policy is appropriate.

2 *Farmland did not act in bad faith in negotiating the January 4, 2000 loss.*

Farmland is also entitled to summary judgment with respect to MGC's bad faith claim that it "failed to promptly settle" the January 4, 2000 claim. The two parties had discussions over the value of bin #9 and MGC's lost income, but could not reach an agreement on the figures. These discussions were mentioned in the deposition of William E. Smith.

Q. You don't remember being offered any settlement money by either Rich Whaley or Andrew Watt during the course of this?

Mr. Smith I can't remember any numbers right off.

Q. As opposed to just numbers. Did you have discussions with them on resolving the case before you filed your lawsuit?

Mr. Smith I think so. Had to have happened or we wouldn't be where we're at today.

Q. There was a disagreement on what those values should be, then?

Mr. Smith. That would be right.

Q. You filed a lawsuit as a result of a disagreement of those values and over the coverage?

Mr. Smith That would be right.

* * * *

Q Well, this is my letter to you, January 13th, 2004. Now there have been previous offers made I don't have those right in front of me, but at least in January of 2004 you were offered \$61,162 in settlement for the bin and that included the foundation. Why is that bid or why is that offer, in your opinion, not enough?

Mr. Smith I think because they discounted the foundation as not taking much to put it in, and it does take a lot to put it in.

* * * *

Q Okay. You were offered \$39,859 for the conveying equipment I'm sorry, you were offered \$27,901 for the conveyer equipment. That was based upon a 30 percent depreciation of conveyor equipment. What's inappropriate about that offer?

Mr. Smith Whenever I had those conveyors put in there, I paid, like, \$50,000 worth of labor and crane to put them in there. See, that doesn't get them up in the air.

* * * *

Q. Farmland offered you \$53,367 for the cost of moving the grain to the other company elevators, and that included \$36,959 that were alleged that the company costs -- it says the farmer's cost is 16,408 And I believe you hired some drivers to haul the grain?

Mr. Smith Yes.

* * * *

Q. They offered another -- first off, what is inadequate about the offer of \$53,367 for the cost of moving the grain in the farmer's cost?

* * * *

Mr. Smith I think that's about what we determined it to be, wasn't it?

* * * *

Q Then they offer \$25,000 in business income loss for a reasonable period of time after the bin was damaged when you couldn't use the facilities to the fullest extent

Mr. Smith I think that was a problem.

Q Why is that a problem?

Mr. Smith. Because we suffered more loss than that.

(See Depo. of William E. Smith, Exh. C, pp. 247, 238, 239, 241, 245, 246)

It is evident from Mr. Smith's testimony that Farmland had offered to settle the January 4, 2000 loss, but the two parties could not agree on the valuation of the various items within the claim. Adding to the disagreement was whether or not the bin was subject to actual cash value or replacement cost. The disagreement on the valuations does not rise to the level of bad faith by Farmland. MGC must proffer evidence sufficient for a trier of fact to find that bad faith was proven by clear and convincing evidence. See, *Erie Ins. Co.*, 622 N.E. 2d at 521 (discussing standard). MGC cannot meet this burden with respect to the January 4, 2000 loss.

E. MGC's Claim for Lost Business Income is Limited to when MGC Voluntarily Decided to Shut the Sulphur Springs Facility Down

MGC is claiming lost income as a result of the January 4, 2000 bin collapse. MGC is further claiming that it had to shut down the Sulphur Springs facility due to MGC's failure to procure other insurance for the facility. Now, MGC wants Farmland to pay for its lost income from this facility as a result of the closure, even though MGC voluntarily shut down the facility due to its inability to find another insurer after the Farmland policy ended.

The Farmland policy states that it will pay lost income during the "period of restoration"

VI BUSINESS INCOME INSURANCE

A. Property Covered

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your operations during the period of restoration. The suspension must be caused by direct physical loss or damage to real property, business personal property or stock covered under this policy.

(See Policy, Exh B, p. "Business Income Insurance – Page 1 of 8") The policy defines the "period of restoration" as the period of time:

- a. Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality .

(See Policy, Exh. B, p "Policy Definitions - Page 5 of 8")

In his deposition, Mr. Smith admitted that he had difficulty in finding another company to insure the Sulphur Springs facility when the Farmland policy ended on February 21, 2000

Q The fact of the matter is you couldn't get insurance and that's why you had to shut down Sulphur Springs?

Mr. Smith Right

(See Depo. of William E. Smith, Exh C, p. 328, Ins. 5-8) Smith testified that he shut down the Sulphur Springs facility sometime in April of 2000, following the collapse of bin #9:

Q After the collapse, did you do any business to take in corn from anybody at Sulphur Springs?

Mr. Smith. No.

Q After the cleanup, did you continue to have employees there until you finally determined that you were not going to be able to reopen Sulphur Springs?

Mr. Smith Yes, I did.

Q. I think we established Jim Cain was there. Were there any other employees there?

Mr. Smith Yes, there were three others.

Q So, in fact, we had wages for four people from the time the cleanup was over until you determined you couldn't reopen. Do you know when the cleanup ended?

Mr. Smith It was sometime in April.

Q And when did you let these employees go?

Mr. Smith I think it was around that time.

Q Okay. Well --

Mr. Smith. Or a little bit after.

(See Depo. of William E. Smith, Exh. C, pp. 321-322)

As a result, Smith cannot claim lost business income under the policy when he is the one who voluntarily shut the Sulphur Springs facility down in April of 2000. The policy limits lost business income to "a date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed . . ." Smith cannot simply close his doors and seek reimbursement from Farmland for lost income when he has decided not to rebuild and reopen the facility. Therefore, Farmland's duty under the policy to reimburse MGC for lost income from the Sulphur Springs facility ended in April of 2000, when the facility was shut down.

IV. CONCLUSION

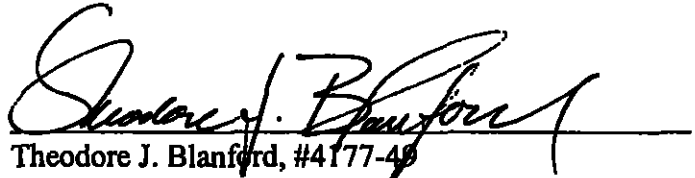
MGC is not entitled to coverage for the December 4, 1999 loss from bin #8 as the evidence shows that the bin "cracked" and did not "collapse" as defined in the policy. Therefore this loss is excluded by the Farmland policy. This coverage issue with bin #8 clearly gave Farmland a reasonable basis to deny the claim, which eliminates MGC's Count II for bad faith as a result of the December 4, 1999 loss.

Additionally, the policy provides for actual cash value and not replacement value with respect to the January 4, 2000 loss. Farmland and MGC disagreed over how bin #9 should be valued. This disagreement between the two parties resulted in Farmland's offer to settle the claim being rejected by MGC. Secondly, Farmland did not cancel the policy in violation of any statute. The policy only had an effective period of three months. Nonetheless, Farmland complied with the statutes regarding notification of nonrenewal of the policy. Clearly, these actions do not rise to the level of bad faith as asserted by MGC, and Farmland is entitled to summary judgment with respect to Count IV of the Complaint.

Finally, MGC's lost business income claim is limited to the January 4, 2000 collapse to the date that it voluntarily shut down the Sulphur Springs facility in April of 2000. The policy allows for a reasonable time to rebuild the facility, during which time lost income will be reimbursed. However, the voluntary abandonment of rebuilding the facility would cut off MGC's claim for lost income. Therefore Farmland should be required to reimburse MGC for lost income from January 4, 2000 until April of 2000.

Accordingly, this Court should grant Farmland's motion for partial summary judgment with respect to Counts I, II, and IV, and enter a judgment as matter of law that the January 4, 2000 loss is limited to actual cash value as defined in the policy and that MGC's claim for lost business income ceased in April of 2000.

Respectfully submitted,



Theodore J. Blanford, #4177-49

Michael E. Simmons, #136-49

HUME SMITH GEDDES GREEN & SIMMONS, L.L.P.

54 Monument Circle, 4th Floor

Indianapolis, IN 46204-2996

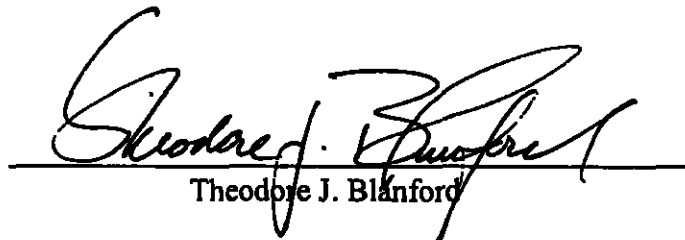
Telephone (317) 632-4402

Attorneys for Farmland Insurance Company and
Nationwide Agribusiness Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded by U.S. Mail, postage prepaid,
to the following attorney on the 13 day of June, 2006

William B. Keaton
KEATON AND KEATON, P.C
126 West Second Street
Rushville, IN 46173
Attorney for Plaintiffs



Theodore J. Blanford

EXHIBIT 8

STATE OF INDIANA)
)
) COUNTY OF HENRY)
)
) CAUSE NO 33CO1-0111-CP-358

IN THE HENRY CIRCUIT COURT

FILED

AUG 1 6 2006

[Signature]
CLERK HENRY CIRCUIT COURT

FILE

MORRISTOWN GRAIN COMPANY,
INCORPORATED and
HONEY CREEK RAILROAD, INC
Plaintiffs,

FARM AND INSURANCE OF DES
MOINES, IOWA,
NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,
Defendants.

FARM AND INSURANCE OF DES
MOINES, IOWA and
NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,
Counter-Claimants,

MORRISTOWN GRAIN COMPANY,
INCORPORATED and
HONEY CREEK RAILROAD, INC ,
Counter-Defendants.

ORDER ON PARTIAL SUMMARY JUDGMENT

On August 7, 2006, Defendant/Counter-claimant Farmland Insurance of Des Moines, Iowa appeared by counsel, Theodore Blanford, and Plaintiffs/Counter-defendants Morristown Grain Company, Inc appeared by counsel, William B. Keaton, on a Motion for Partial Summary Judgment filed by Defendant/Counter-claimant (hereinafter Farmland). The Court heard argument and reviewed evidence and FINDS and ORDERS the following:

Summary Judgment is appropriate when there are no genuine issues of material fact, and the issue can be decided as a matter of law. The purpose of summary judgment pursuant to Trial Rule 56 is to terminate litigation, *Exler v. St. Joseph Regional Medical Center South Bend Campus, Inc.*, 789 N.E.2d 497, 500 (Ind.App. 2003). The moving party bears the burden of showing entitlement to summary judgment as a matter of law and once the movant has met that burden, the non-movant

CONCLUSIONS OF LAW

Farmland seeks partial summary judgment with respect to 1) Breach of Contract regarding the December 4, 1999 loss; 2) the bad faith claims; 3) determination that the January 4, 2000 loss be limited to actual cash value rather than replacement value; and 4) that any lost income claimed by Morristown be limited to the date Morristown voluntarily closed the Sulphur Springs facility

faith

Plaintiff/counter-claimant (hereinafter Morristown) operated a multi-location grain buyer/storage business with several locations in mid-central Indiana. Farmland issued a commercialGard insurance policy to Morristown with a policy period of December 1, 1999 to February 21, 2000 [Plaintiff's Exhibit 1 to William Smith deposition] On or about December 4, 1999 Morristown suffered a loss at their facility. Morristown submitted a claim which was denied by Farmland who alleged that the loss was not covered. On January 4, 2000, Morristown suffered a second loss at their Sulphur Springs facility. Morristown submitted a claim which Farmland accepted as a covered loss, but a dispute arose over the settlement of the claim. On November 13, 2001, Morristown filed suit alleging breach of contract, negligence, damages, wrongful cancellation and bad

Under Indiana law, insurance contracts are subject to the same rules of interpretation as other contracts. A contract is generally interpreted by examining the plain ordinary meaning of the terms, *Zollman v. Geneva Leasing Associates, Inc.*, 780 N.E. 2d 387, 393 (Ind. App. 2002). Only when a reasonable person could find the terms susceptible to more than one meaning, may the Court consider extrinsic evidence in the interpretation of the written instrument, *Id.* at 292. There is no evidence that the written contract terms were confusing or in dispute. Although all reasonable inferences are construed in favor of the non-movant, the non-movant may not rest upon "mere allegations or denials of his pleading, but his response, by affidavits or otherwise...must set forth specific facts showing there is a genuine issue for trial." Trial Rule 56; *Cowe v. Forum Group, Inc.*, 575 N.E. 2d 630, 633 (Ind. 1991)

MOTION TO STRIKE

Farmland's Motion to Strike Paragraphs 20, 21, 22, 23 and 29 of the Affidavit of William E Smith is GRANTED as containing either conclusory statements or hearsay statements. Farmland's Motion to Strike Paragraphs 3, 4, 16 and 27 of the Affidavit of William E. Smith is DENIED and said statements are deemed proper for consideration in these proceedings.

COUNT I: BREACH OF CONTRACT

The parties dispute the nature of the December 4, 1999 loss. Farmland claims that the loss is a result of "cracking" or "bulging" which are not covered losses. Morristown claims that the loss is a covered "collapse." The Court finds that this distinction regarding the precise nature of the damage is a genuine issue of material fact which precludes the entry of summary judgment. The motion for partial summary judgment as to Count I is ***DENIED***

The parties dispute the extent of coverage for lost business profits following the January 4, 2000 loss. Morristown shut down the Sulphur Springs facility in April of 2000. Farmland argues that this is a "voluntary" shutdown which should serve to limit coverage. Morristown alleges that the insurance policy coverage allows for a "reasonable" time to repair the facility under the section for the period of restoration. The amount of lost business profits constitutes a factual dispute which precludes the entry of summary judgment. The court finds that a genuine issue of material fact exists

LOST BUSINESS PROFIT LIMIT

purposes in this litigation.

Morristown has agreed that the coverage for the January 4, 2000 loss is limited to the actual cash value instead of replacement cost as the same shall be deemed as stipulated for all further

ACTUAL CASH VALUE

Count IV

Morristown was covered by a policy of insurance with coverage from December 1, 1999 to February 21, 2000. This policy lapsed on February 21, 2000 and was not renewed. William Smith acknowledged these policy terms in his deposition [William Smith deposition page 328, line 22 *et seq.* and Plaintiff's Exhibits 1 and 2]. Farmland has established that the Indiana insurance statutes have been complied with and there is no genuine issue of material fact which would establish a claim for bad faith on this issue. The motion for partial summary judgment shall be **GRANTED** as to

COUNT IV: BAD FAITH AND WRONGFUL CANCELLATION

December 4, 1999 loss and said Count II is hereby ***DISMISSED***.

Morristown has agreed to dismiss Count II of the Complaint regarding bad faith on the

COUNT II: BAD FAITH

regarding this coverage and the motion for partial summary judgment on this issue is **DENIED**

CONCLUSION

1 The Motion for Partial Summary Judgment filed by Farmland is hereby **GRANTED** as to Count IV.

2 The Plaintiff has dismissed Count II.

3. The January 4, 2000 covered loss is limited to actual cash value rather than replacement value.

4 There are genuine issues of material fact which preclude the entry of partial summary judgment as to Count I and the issue of the amount of lost business profits and the

Motion for Partial Summary Judgment filed by Farmland on these issues is **DENIED**

5 The matter will be set for pre-trial conference and trial upon praecipe by the parties after all efforts at mediation have been exhausted.

6. Farmland is given 30 days to file a response to Morrisstown's request for prejudgment interest

ALL OF WHICH IS CONSIDERED, ORDERED ADJUDGED AND DECREED THIS 16th

DAY OF AUGUST, 2006.


HON. MARY G. WILLIS
JUDGE, HENRY CIRCUIT COURT

DISTRIBUTION:

William B. Keaton, Counsel for Plaintiff/Counter-defendant Morrisstown Grain Co., Inc.
Theodore Blanford, Counsel for Defendant/Counter-claimant Farmland Insurance

EXHIBIT 9

LAW OFFICES
KEATON AND KEATON, P.C.
126 WEST SECOND STREET
RUSHVILLE, INDIANA 46173-1874

WALTER B. KEATON (1912-1980)
WILLIAM B. KEATON

TELEPHONE (765) 932-3947
FAX (765) 938-2803

December 13, 2005

Mr. John H. Brooke
Brooke & Mawhoir, P.C.
P.O. Box 1071
Muncie, Indiana 47308-1071

Re Honey Creek Railroad, Inc. v.
Gary L. Roberts, et al
Henry Circuit Court
No. 33CO1-0506-CT-0019

Dear Mr. Brooke:

I have spoken with Richard R. Wilson concerning your contentions that Honey Creek has some duty or obligation to remove the railroad bed and clean the property or would have some other unspecified duty relating to the possible abandonment of the railroad. Mr. Wilson has advised me that there is no such duty, and further, that in over thirty years of railroad law practice, he has never seen an order which would require any such action on the part of the railroad.

It is obvious that the outcome of this matter will hinge upon the legal question of whether or not there has been an abandonment. The legal question is within the exclusive jurisdiction of the federal government through the Surface Transportation Board. I had previously asked you whether or not you would agree to an order of referral to the Surface Transportation Board to have this legal question answered. Please advise me whether or not you will agree to the order of referral to the Surface Transportation Board.

I have enclosed a copy of my follow-up letter to Judge Toney asking him to set this petition for hearing. I am hopeful a hearing will not be required.

Also enclosed please find the Answer of Honey Creek Railroad, Inc. to each of the Counter-Complaints which you filed and my Affirmative Defenses.

I will await hearing from you regarding this matter.

Very truly yours,



William B. Keaton

WBK:lm

cc Mr. William I. Smith
Richard R. Wilson, Esq.

Encl

Honey Creek Railroad, Inc.

THIS LETTER IS INTENDED FOR THE USE OF THE ADDRESSEE ONLY AND IS NOT INTENDED FOR
THE BENEFIT OR RELIANCE UPON BY ANY OTHER PERSON OR ENTITY

EXHIBIT 10



CourierTimes

www.thecouriertimes.com

Thursday, May 10, 2007

Board turns deaf ear to opponents 2 ethanol plants OK'd

Thursday, May 10, 2007



A group of neighbors who live near the proposed Blue River Ethanol site stood firm in their opposition of the plant. They attended Wednesday's meeting wearing stickers which read, "No! Blue River Ethanol, LLC." (C-T photo John Guglielmi)

After more than three hours of deliberation, the Henry County Commissioners unanimously voted Wednesday in favor of two proposed ethanol plants.

Despite a petition of more than 640 signatures and nearly 80 people protesting at Wednesday's meeting, commissioners first approved a movement to adopt the proposal presented by Julian Gehman for Blue River Ethanol. Gehman, a Washington, D.C. attorney, is founder of the company planning to transform 189 acres of northern Henry County farm land into an industrial site for ethanol production.

Donning stickers that read "No! Blue River Ethanol, LLC," opponents of the plant initially filed into the old Henry Circuit Courtroom at 9 a.m. Wednesday morning. Commissioner Phil Estridge announced that the meeting would take place back in the commissioner's office regardless of the

ETHANOL PLANTS At a glance

Henry County Commissioners approved zoning for two ethanol plants on Wednesday

Twin Creek Ethanol

Production of 110 million gallons per year

\$228 million investment

40-50 people employed

Blue River Ethanol

Production of 100 million gallons per year

\$180 million investment

50-60 people employed

"We are aware of the issues here," Estridge stated, "so we're not going to listen to everybody, particularly if you're repeating what we already know."

With 17 letters in protest of the Blue River Ethanol plant sitting on his desk, Estridge said commissioners already were well aware of the concerns.

Attorney Drew Price represented a group of neighbors who live near the proposed Blue River Ethanol site. With an aerial map of the land, Price pleaded for the commissioners to consider the proximity of homes in the area.

"There are more than 289 homes within one square mile from where this plant would be," he stated. One of those homes, owned by Kathy Miller, will be surrounded on three sides by the plant and is expected to decrease by 35 percent in value, according to an appraiser's report from Rhodes Realty.

Price also pointed out that a noise study had not been presented and light pollution would be a nuisance.

Resident Lonnie Nation, who lives within a mile of the site, told commissioners he did not feel there was sufficient protection in case of an explosive blast, though Gehman and company offered to put up a four foot berm around the east side.

But the commissioners, along with Mount Summit town officials, said the long-term economic force will greatly outweigh the potential downsides.

"The economic impact is probably going to be the greatest to ever hit this county," said Paine Township Trustee Mike Burch.

Republican mayoral candidate Jim Small was also enthusiastic. "This is really going to be a wonderful thing for

the community," he said

Commissioner Larry Hale moved to adopt Blue River Ethanol's proposal with the following conditions

Blue River Ethanol shall provide a \$5 million post-closure bond to dismantle and return the land to its pre-construction condition

Blue River Ethanol shall build a 6-foot berm along the entire length of the project on County Road 50E and shielding the properties abutting the south and east penimeters of the property with two rows of evergreen trees staggered on the top

Blue River Ethanol shall have major construction in place, consisting at a minimum of substantial excavation and poured foundations, within 12 months of this date, which time period will be stayed for any period of time during which there is pending any statutory remonstrance activity and litigation

Candidate Pushes Project

Just one day after New Castle's primary election, Small told commissioners he came to the meeting "weanng two hats "

Small was assigned by the New Castle-Henry County Economic Development Corp to work on brnnging ethanol to Henry County He emphasized that he wanted both plants However, he had concerns about Twin Creek Ethanol

"I may be mayor of New Castle and I don't want trucks running through our town," Small told commissioners

In a truck traffic analysis, Twin Creek Ethanol would supposedly be passing 110 trucks of corn per day through the area, compared to 24 trucks per day at Blue River Ethanol

Mayor Tom Nipp had also expressed concerns with excessive truck traffic in the downtown area

Nipp, former New Castle fire chief, said in his opinion, the worry of an explosion was unnecessary, though

"The idea of a blast with fallout and everything is really exaggerated," he said.

Some of the neighbors who previously opposed Twin Creek Ethanol changed their tunes at Wednesday's meeting After speaking with representatives of Twin Creek Ethanol, landowners in the area felt now that it might not be a bad thing after all

In fact, the commissioners didn't receive one letter complaining about the Twin Creek proposal

Jim Overmyer, who admitted to being violently opposed to the plant at first, said Twin Creek Ethanol is now generously meeting his requests.

"We've signed a legal document and if they back out, I'll just sue 'em," he said

Commissioner Bill Cronk moved to adopt Twin Creek Ethanol's proposal upon the following conditions

Twin Creek Ethanol shall provide a \$5 million post-closure bond to dismantle and return the land to its pre-construction condition if the plant ceases production for a penod of 24 consecutive months

Twin Creek Ethanol shall have major construction in place, consisting of a minimum of substantial excavation and poured foundations, within 12 months of Wednesday's date, which time period will be stayed for any period of time during which there is pending any statutory remonstrance activity and litigation

Central Avenue from Wilbur Wnght Road to Road 600E, a one-mile stretch, and Road 600E from Brown Road to State Road 38, a two-mile stretch, will be kept in passable condition Twin Creek will reconstruct these roads to new road specifications

Related Links