

Docket No. AB 1261

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ADVERSE ABANDONMENT
SARATOGA AND NORTH CREEK RAILWAY IN TOWN OF JOHNSBURG, N.Y.RESPONSE OF CHAPTER 11
TRUSTEE OF SAN LUIS & RIO
GRANDE RAILROAD TO DECISION
DATED DECEMBER 18, 2019 BY THE
SURFACE TRANSPORTATION BOARD

William A. Brandt, Jr., solely in his capacity as the chapter 11 trustee (the “Trustee”) for the bankruptcy estate of the San Luis & Rio Grande Railroad, Inc. (“SLRG”), the parent of Saratoga and North Creek Railway, LLC, by and through counsel, hereby files his response to the Decision of the Surface Transportation Board in the above-reference proceeding dated December 17, 2019.

On March 30, 2020, the Trustee filed a voluntary petition under chapter 11 on behalf of Saratoga and North Creek Railway, LLC (“SNCR”). SNCR’s bankruptcy case is pending before the United States Bankruptcy Court for the District of Colorado, Case No. 20-12313-TBM.

BACKGROUND

On September 12, 2019, as part of a loan default proceeding, SLRG was placed into receivership. See *Big Shoulders Capital LLC v. San Luis & Rio Grande R.R.*, Case No. 19-cv-06029 (N.D. Ill.). Novo Advisors was appointed as receiver (the “Receiver”) in that proceeding. On October 18, 2019, the U.S. District Court for the Northern District of Illinois issued an order expanding the receivership to include certain SLRG affiliates and subsidiaries, including the Saratoga and North Creek Railroad (“SNCR”). *Big Shoulders Capital*, Case No. 19-cv-06029 (Oct. 18, 2019 Amended Receivership Order) (N.D. Ill.). In its Initial Report of Property and Known Liabilities, the receiver listed SNCR’s track and roadbed as an asset. *Big Shoulders Capital*, Case No. 19-cv-06029 (Nov. 8, 2019 Initial Report, App. 2) (N.D. Ill.).

After SLRG was placed in receivership, several creditors filed an involuntary bankruptcy petition against SLRG in the U.S. Bankruptcy Court for the District of Colorado (the “Bankruptcy Court”). See *In re San Luis & Rio Grande R.R.*, Case No. 19-18905-TBM (Bankr. D. Colo.).

Because SLRG is a “railroad” as that term is defined under the Bankruptcy Code, special provisions unique to railroad reorganizations apply to the Bankruptcy Case. Specifically, the Surface Transportation Board and the Department of Transportation have the absolute right to raise and appear on any issue in a railroad case. 11 U.S.C. § 1164. Further, a trustee must always be appointed in railroad reorganizations, and the Secretary of Transportation chooses and submits to the United States trustee a list of five persons who are qualified to serve as a trustee of a railroad. The Trustee was on the list submitted by the Secretary of Transportation. 11 U.S.C. § 1163. On December 30, 2019, the Trustee was appointed as chapter 11 trustee for the bankruptcy estate of

SLRG in the Bankruptcy Case. In short, the Trustee was chosen by the Department of Transportation to operate SLRG due to his specific railroad experience and acumen.

SNCR is a separate legal entity from SLRG. The Bankruptcy Court authorized, but did not direct, the Trustee to file a bankruptcy petition on behalf of SNCR. After discussions with the Surface Transportation Board and other interested parties regarding SNCR, the Trustee determined that it would be in the best interests of SNCR's creditors and the public to file a bankruptcy petition on SNCR's behalf.¹ SNCR's voluntary petition under chapter 11 of the Bankruptcy Code was filed on March 30, 2020.

REQUEST FOR CONTINUED ABEYANCE OF ABANDONMENT PROCEEDING

The Trustee is opposed to the application to abandon the SNCR railway. He filed the SNCR bankruptcy petition in order to explore a potential sale of SNCR's assets as an operating railroad. The Trustee has been and is currently having negotiations and discussions with potential bidders in such a sale, and others as to whether such a sale is possible and the parameters of such a sale process. A sale would maximize the value of the Debtor's assets for the benefit of its creditors. A sale would also ensure that the economic benefit in maintaining railroad operations in upstate New York is preserved.

The Trustee is requesting that the current abandonment proceeding be placed in abeyance until September 30, 2021 for the following reasons. First, it is an open question as to whether the automatic stay applies to this proceeding. The purpose of the automatic stay is to provide a debtor with "breathing room", *i.e.*, time to marshal its assets and to prepare a plan of reorganization to maximize the value of those assets for the benefit of the Debtor's creditors. The Trustee needs additional time to determine if SNCR can be sold as an operating railway to maximize the return to SNCR's creditors.

Second, the Trustee needs additional time to finalize a sale. Now that the Covid-19 pandemic appears to be winding down, the Trustee has started to actively market the SNCR rail line. He has established a data room for potential purchasers to conduct due diligence as to SNCR's assets and upon which such potential purchasers would be able to make an offer for those assets. To date, five separate entities have signed (or are in the process of signing) Non-Disclosure Agreements with the Trustee in order access the data room. The number of potential parties who have expressed an interest in purchasing the SNCR rail line has increased substantially in the past couple of months. The Trustee is increasingly optimistic that he will be able to effectuate a sale of SNCR as an operating rail line.

¹ Unlike SLRG, SNCR is not a "railroad" under the Bankruptcy Code. The definition of "railroad" under 11 U.S.C. § 101(44) is limited to a "railroad engaged in the transportation of individuals or property." Since SNCR has not been "engaged" in operating a railroad since 2018, it does not fall under the Bankruptcy Code definition. Accordingly, no trustee has been appointed for SNCR pursuant to 11 U.S.C. § 1163. Instead, the Trustee has control over SNCR due to the fact SNCR is wholly owned by SLRG.

Third, the Trustee's sales efforts are supported by Town of Newcomb, New York, as set forth in the letter to the Surface Transportation Board from the Town of Newcomb filed in this proceedings on March 11, 2021. This extension request is also supported by Revolution Rail Co., and who operates a pedal-powered rail "bike" excursion company on a stretch of rail lined owned by SNCR.

Accordingly, the Trustee requests that the Surface Transportation Board continue the ongoing abeyance of this proceeding. The request is not simply for delay but to ensure that all contingencies are properly explored to maintain railroad operations for the region.

Dated: April 30, 2021

MARKUS WILLIAMS YOUNG &
HUNSICKER LLC

s/ Jennifer Salisbury

James T. Markus, Co. Reg. #25065
Jennifer Salisbury, Co. Reg. #37168
1750 Sherman Street, Suite 1950
Denver, Colorado 80203
Telephone (303) 830-0800
Facsimile (303) 830-0809
jsalisbury@markuswilliams.com

*Counsel for the Trustee and Saratoga and
North Creek Railway, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2021, I caused a true and correct copy of the **RESPONSE TO CHAPTER 11 TRUSTEE OF SAN LUIS & RIO GRANDE RAILROAD TO DECISION DATED DECEMBER 18, 2019 BY THE SURFACE TRANSPORTATION BOARD** to be filed electronically with the Surface Transportation Board's E-Filing System and sent via First-Class mail to the following Parties of Record:

Susan L. Taylor
The Capitol Office Of The Attorney General
Albany, NY 12224-0341

Micheal Dupee
PO Box 202
North Creek, NY 12853

Claudia Braymer
PO Box 2369
Glens Falls, NY 12801-1280

Daniel Elliott
2000 Pennsylvania Avenue NW
Suite 7000
Washington, DC 20006

Paul J Mitchell
15 Mitchell Lane
Tupper Lake, NY 12986

Donn C. Meindertsma
1850 M Street Nw, Suite 600
Washington, DC 20036

Steven Potter
64 Talbot Way
Long Lake, NY 12847

David Michaud
118 South Clinton Street, Suite 400
Chicago, IL 60661

Thomas S. Berkman
625 Broadway, 14Th Floor
Albany, NY 12233-1010

John D. Heffner
1001 Pennsylvania Ave., Nw Suite 1300
South
Washington, DC 20004

Donn Meindertsma
1850 M Street NW
Suite 600
Washington, DC 20036

Darren Darrah
7566 Court Street
P.O. Box 217
Elizabethtown, NY 12932

D. Scott Bassinson
Three Empire State Plaza
Albany, NY 12223-1350

Gerald Delaney
326 Downs Rd
Cadyville, NY 12918

Joshua M. Tallent
The Capitol Office Of The Attorney General
Albany, NY 12224-0341

Pipich Iii Rudolph
2669 Glenny Ln.
West Mifflin, PA 15122-1512

William Kuntz, Iii
PO BOX 1801
Nantucket Island, MA 02554-1801

Micheal Dupee
PO Box 202
North Creek, NY 12853

Robin T. Deloria
P.O. Box 405
Newcomb, NY 12852

Pipich Iii Rudolph
2669 Glenny Ln.
West Mifflin, PA 15122-1512

William C. Janeway
103 Hand Avenue, Suite 3
P.O. Box D-2
Elizabethtown, NY 12932-0640

/s/ Jessica Anderson
Jessica Anderson
Legal Assistant for Markus Williams Young
& Hunsicker LLC