

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36521]

Fortress Investment Group LLC—Acquisition and Continuance in Control Exemption—
Ohio River Partners Shareholder LLC, Katahdin Railcar Services, LLC, DesertXpress
Enterprises, LLC, Union Railroad Company, Gary Railway Company, Delray
Connecting Railroad Company, Texas & Northern Railroad Company, and Lake
Terminal Railroad Company

Fortress Investment Group LLC (Fortress), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) for the benefit of Fortress Transportation and Infrastructure Investors LLC (FTAI) and Percy Acquisition LLC (PALLC), which are managed by an affiliate of Fortress, to acquire control of five common carrier railroads (collectively, the Transtar Railroads)¹ that are currently owned by Transtar, LLC (Transtar), and to continue in control of both the Transtar Railroads and certain rail carriers (the Fortress Railroads) owned by companies or investment funds managed by affiliates of Fortress.²

¹ The Transtar Railroads are Union Railroad Company, Gary Railway Company, Delray Connecting Railroad Company, Texas & Northern Railroad Company, and Lake Terminal Railroad Company. Fortress states that all of the Transtar Railroads are Class III rail carriers.

² The Fortress Railroads are Ohio River Partners Shareholder LLC (ORPS), Katahdin Railcar Services LLC (KRS), and DesertXpress Enterprises, LLC (DXE). Fortress states that DXE is authorized by the Board to construct high-speed passenger rail service in California, ORPS is a non-operating carrier, and KRS is a Class III rail carrier.

The verified notice states that on June 7, 2021, PALLC and United States Steel Corporation, Transtar's current owner, entered into a purchase agreement pursuant to which PALLC will acquire 100% of the equity interests of Transtar. Upon consummation of the transaction contemplated by the purchase agreement, PALLC, a non-carrier, will control the Transtar Railroads. PALLC is owned and controlled by FTAI which is managed by an affiliate of Fortress. Following the transaction, FTAI will continue to indirectly own 50.1% of the equity interests of ORPS and all of the equity interests of KRS, and investment funds managed by affiliates of Fortress will continue to indirectly own a majority of the equity interests of DXE. According to Fortress, ORPS, KRS, and DXE may each be deemed to be controlled by Fortress for purposes of 49 U.S.C. § 11323, because ORPS and KRS are indirectly controlled by FTAI, DXE is indirectly controlled by Brightline Holdings LLC, and FTAI and Brightline Holdings LLC are managed by affiliates of Fortress.

The transaction may be consummated on or after July 14, 2021, the effective date of the exemption (30 days after the verified notice was filed).

Fortress represents that: (1) none of the Transtar Railroads or Fortress Railroads connect with each other or will connect with each other following the transaction; (2) the transaction is not part of a series of anticipated transactions that would connect any of those carriers; and (3) none of the Transtar Railroads or Fortress Railroads is a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. § 11323 pursuant to 49 C.F.R. § 1180.2(d)(2). Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier

of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. § 11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§ 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 7, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36521, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, one copy of each pleading must be served on Fortress's representative, Terence M. Hynes, Sidley Austin LLP, 1501 K Street, N.W., Washington, DC 20005.

According to Fortress, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: June 25, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.