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Office of Chief Counsel
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Public Record

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April 1, 2026

VIA E-FILING

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Lampwrights LLC
– Operation Exemption –
Line in Jefferson County, PA
Surface Transportation Board Finance Docket 36911

Dear Chief of Case Administration:

Lampwrights LLC respectfully requests that the Board strike from the record the March 31, 2026, letter submitted by Joshua Dean, Esq. In the Board's March 26 decision seeking supplemental information, the Board provided no right by any party except Lampwrights to submit further comments in this proceeding.

Mr. Dean asserts no interest in the private road or as he describes it, "a large driveway" to justify why he should be entitled to file a response. Further, Mr. Dean has provided no Board regulation or case law in support of his right to comment. As the Board knows, Mr. Dean had previously filed a petition and the Board stated that it would address his and other petitions in a subsequent proceeding.

Not only does Mr. Dean lack the right to comment, but his (unverified) letter errs because it attempts to suggest that Lampwrights lacks a property interest in the private road/driveway. If the Board does except Mr. Dean's reply to the Lampwrights supplement, Lampwrights respectfully requests that the Board accept this letter and the enclosed exhibit to correct Mr. Dean's incorrect representation of the facts.¹

1) The Dean Letter incorrectly asserts that Lampwrights omitted information from the Board in its March 31, 2026 supplement.

Mr. Dean asserts that the Lampwrights supplement failed to adequately respond to the Board's request for information. He asserts that the phrase "any affected road segment" should

¹ Mr. Dean also argues that a certain threshold should apply to rail traffic. However, his threshold (increase in the number of rail cars) appears to be one of his own invention. Lampwrights will not respond and instead refers the Board back to its March 31, 2026, supplement at 3-4.

apply the regulatory threshold to a private road/driveway. Mr. Dean provides no regulation or Board precedent in support of his argument that an applicant's own private road/driveway should be included in a threshold analysis under 49 C.F.R. § 1105.7(e)(5)(i)(C).

In his letter, Mr. Dean states that the "proposed transloading station...is located on a private road, not owned by Lampwrights, that runs from State Route 219, past the proposed transload station side, and on to private property." He argues that this omission demonstrates that "Lampwrights failed to comply with the Board's directive."²

Mr. Dean continues, the "private road leading to the proposed transload site is nothing more than a large driveway." Further, he states, "[t]here are no road lines or markers." And he continues, "[t]here is no significant traffic along the road of any kind." Mr. Dean provides no evidence or even a verification of any of his statements. However, he continues that Lampwrights proposed usage would trigger the environmental threshold and thus, the Board should require further environmental analysis.³

a) Lampwrights holds easements rights to use the private road/driveway.

Mr. Dean's description of the private road as a "large driveway" is accurate. However, his claim that this large driveway is "not owned by Lampwrights" infers that Lampwrights lacks an interest in the private road/driveway. In fact, when Lampwrights acquired the property from Buffalo & Pittsburgh, Inc. ("BPRR"), it also acquired the easement that BPRR holds to utilize the private road/driveway.

Enclosed is a state property law decision granting BPRR's predecessor railroad, Pittsburg & Shawmut Railroad, prescriptive easement rights to use the private road/ driveway "by foot, vehicle or other means of transportation, without limitation as to the type of vehicle."⁴

Based on the Dean Letter, it appears that a total of three properties hold rights to use the private road/driveway.

b) Lampwrights properly provided the Board with supplemental information in compliance with the Board's March 26, 2026 order.

Mr. Dean does not provide any Board regulation or precedent suggesting that the threshold requirement should apply to a private road or driveway utilized by an applicant even if that private road or driveway is shared with two other individuals. Mr. Dean himself describes the private road as a large driveway and he states that the private road has no road lines or markers.

It appears then that this private road is not a "road" at all for the purposes 49 C.F.R. § 1105.7(e)(5)(i)(C). He appears to be correct that it is in fact a driveway. Considering that it is a driveway shared by three properties, it is not a "road" under the regulations.

² Dean Letter at 1.

³ *Id.*

⁴ *Ferraro v. Doan Coal Company et al*, No. 702 – 1975, slip op. at 9 (Ct. C.P. of Jefferson County, Pennsylvania Aug. 5, 1977).

2) The private road/driveway has been utilized for industrial railroad purposes for 110 years.

In his letter, Mr. Dean seeks further Board environmental analysis due to “the traffic impacts on the private road, and the substantial change this activity would present to the surrounding community.”⁵ Mr. Dean's unverified comments would lead the Board to believe that this area is devoid of industrial development.

In fact, the Rail Line and the private road/driveway have hosted industrial activities for 110 years. The case cited above not only provides evidence of Lampwrights' easement interest in the private road/driveway, it also provides a brief history of the private road and the Rail Line demonstrating that from 1916 - 1977, the Rail Line and the private road/driveway were used for industrial railroad purposes.

Here the evidence is clear that since at least 1916 anyone has used the strip of land in question whenever he had reason to travel from the public highway to Shawmut Yard. Shawmut's employees have used it as a way of travel, both by foot and vehicle, to their place of work at the Interchange Yard. Shawmut itself has used the road as a way for delivery of railroad car and track parts. New automobiles and freight generally have been hauled from the Shawmut yard over this road to the public highway. The various tenants of the former diesel barn, converted to a warehouse facility in the 1950's, have used this road as an access way in and out from the public highway to haul such things as glass, tires and building materials. And since at least 1940 this strip of land has been used by various coal operators as an access way to get from the public dock to their coal loading docks at Shawmut yard.

Id., slip op. at 5-6. The case enclosed, granted BPRR's predecessor the right to grant its “business invitees and its successors and assigns” the right to use the private road. At the time of this 1977 decision, the court described the use for coal transloading. “If we were to accept the plaintiff's argument that the roadway should not be used by today's larger, heavier trucks, we would in effect, be holding that the roadway could not be used for coal loading purposes at all.” The court continued, “[t]his would deny a use which has been made of the roadway off and on since 1940.” *Id.*, slip op. at 9.

As explained in the Lampwrights replies filed March 20, 2026, the history of the Rail Line and the use of this private road/driveway continued until at least 2014, as demonstrated by the Google Earth satellite images of the area. BPRR then used it as sidetrack. In total, the Rail Line and the public road/driveway have been utilized for industrial railroad operations for 110 years.

The Board has stated that its “use of thresholds is meant to help us answer the question we ask in every action we undertake: Does our action create a potential for significant environmental

⁵ Dean Letter at 3.

impact?"⁶ The Board continued, "[t]o provide that answer, we have to look at the state of things before we act and compare them to any new opportunities created by our action."⁷

In this instance, Lampwrights has demonstrated that the Rail Line would not trigger the threshold requirements of 49 C.F.R. § 1105.7(e)(5)(i)(C). Further, if the Board considers the state of things before it acts, it will understand that for the last 110 years, the Rail Line, the private road/driveway, and associate property have been used for industrial railroad purposes. As such, by allowing the Lampwrights exemption to proceed, the Board would not be taking an action that has potential for significant environmental impact and therefore further environmental analysis is not warranted.

Sincerely,



Justin J. Marks
Counsel for Lampwrights LLC

Enclosure

cc: Parties of Record

⁶ *Missouri Central Railroad Company-Acquisition and Operation Exemption-Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33508, *et al.*, slip op. at 7 (STB served Apr. 30, 1998), *aff'd sub nom. Lee's Summit, Mo. v. STB*, 231 F.3d 39 (D.C. Cir.2000).

⁷ *Id.*

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY,
PENNSYLVANIA

CIVIL DIVISION

R. LEO FERRARO and :
R. EDWARD FERRARO, :
Plaintiffs :

vs. :

No. 702 - 1975

DAVID G. DOAN, Individually :
and d/b/a DOAN COAL COMPANY :
and DAVID G. DOAN and JAMES :
S. DOAN, Individually and :
d/b/a RELIABLE TRUCKING & :
WELDING COMPANY, :
Defendants :

IN EQUITY

FILED

AUG-5 1977

CADWALLADER M. EMERY
PRO. & CLERK of COURT

A D J U D I C A T I O N

AND NOW, August 5, 1977, after a non-jury trial in
this matter the Court makes the following adjudication:

STATEMENT OF ISSUES

The plaintiffs, R. Leo Ferraro and R. Edward Ferraro, hereinafter called "Ferraro", originally brought this suit in equity against defendants, David G. Doan, individually and d/b/a Doan Coal Company and David G. Doan and James S. Doan, individually and d/b/a Reliable Trucking & Welding Company, hereinafter called "Doan". The Pittsburgh and Shawmut Railroad, hereinafter called "Shawmut", became a party in the case upon its petition to intervene as a defendant in Ferraro's action against Doan.

Ferraro seeks to enjoin Doan from hauling coal over a roadway leading from Pa. Traffic Route 219 in a Southerly direction for a distance of approximately 250 feet to premises of

Shawmut where a coal loading dock is located. This roadway is approximately 18 feet wide and the East ten feet of the roadway is located on the Ferraro land. The West eight feet or so of the roadway is located on lands of a third party not involved in this lawsuit.

No written grant exists from Ferraro nor any of Ferraro's predecessors in title authorizing Doan to use the roadway. Likewise, no written grant exists giving Shawmut the use of said roadway. However, Shawmut contends that the roadway in question is available for use by Shawmut, business invitees of Shawmut and all others who have occasion to travel from the public highway to the Shawmut premises.

Shawmut bases its position on the following legal theories:

- (1) That an easement by prescription exists.
- (2) That there is a presumptive grant of an easement over the roadway.
- (3) That there is an implied easement.
- (4) That there is an easement by necessity.

CHRONOLOGICAL STATEMENT

In 1883 Redford Segars, then the owner of the farm which encompassed all of the area presently in question, sold a 100-foot right-of-way to the New York, Lake Erie & Western Coal and Railroad Company (now the Erie-Lackawanna Railroad Company).

Approximately ten years later Redford Segars conveyed that portion of his farm which was located South of the right-of-way of the Erie Railroad to David John Robertson. This Deed conveyed thirty-one and a quarter acres, more or less, together with the following grant:

" . . . And the said parties of the first part also grant, bargain and sell unto the said David Robertson, his heirs and assigns,

the free and uninterrupted use, liberty and privilege of and passage in, over, across, and along a piece of land ten feet wide extending from the northwest corner of the land first above described (the parcel situated South of the Railroad right-of-way and sold to David Robertson by this Deed) and extending across the right-of-way of the New York, Lake Erie & Western Coal and Railroad Company, and the West end of the first party's land North of said right-of-way along lands of John Moore to the State Road...."

Shortly after conveying the tract South of the Railroad right-of-way Segars conveyed the balance of his farm to Vera Segars. This Deed conveyed the parcel lying between the Railroad right-of-way and the State Road with the following reservation:

"Reserving, however, to D. R. Robertson for his and his heirs and executors a strip of land 10 feet wide across (sic) the West end of aforesaid described piece of land from the Brockwayville road along lands of John Moore (the neighbor to the West of the tract conveyed) in a southerly direction to the right-of-way of the aforesaid New York, Lake Erie & Western Coal & Railroad Company as a road to and from the aforesaid Brockwayville road to lands owned by the aforesaid D. R. Robertson South of the aforesaid Railroad Company line of railroad."

In 1908 another railroad, the Brookville and Mahoning Railroad, was built to intersect with the Erie Railroad a short distance West of the Segars tract. In 1916 the Brookville and Mahoning Railroad became the Pittsburg & Shawmut Railroad Company and Shawmut acquired from Vera Segars a strip of land 200 feet wide running parallel to the existing right-of-way along the southern edge of her property. Ferraro now owns the tract retained by Vie Segars between the State Road (Route 219) and the Railroad right-of-way. Merle Keister now owns the former David Robertson tracts South of the Railroad right-of-way. Shawmut now owns or has operating agreements covering the original 100 foot right-of-way of the New York, Lake Erie & Western Coal &

Railroad Company, purchased in 1893 and the additional 200 foot right-of-way which Shawmut itself purchased in 1916.

Following the acquisition by Shawmut in 1916 of the additional 200 feet strip of land, Shawmut constructed a railroad yard on this strip of land to serve as the northern terminus of the Shawmut Railroad where it intersected with the Erie Railroad.

During the years since 1916 Shawmut's employees, such as repairmen, car inspectors, section crews and yard crews have used the strip of land in question as a means of access from the public highway to the Shawmut interchange yard. Shawmut has also used this strip of land as the way for its trucks to deliver materials and supplies to the interchange yard.

In the early 1940's the first coal loading dock was located at the Shawmut interchange yard and since that time several different coal operators have built coal loading docks at the Shawmut Yard, and used the strip of land in question as the way to get to the coal loading docks from the public highway.

In 1954 Shawmut constructed a diesel barn at the interchange yard. However, by about 1957 Shawmut was no longer using this building as a diesel barn and in the years since 1957 Shawmut has leased this building from time to time to various third parties for use as a warehouse and general storage facility. The strip of land in question has always been used by these third parties as the way to get to this warehouse facility from the public road.

D I S C U S S I O N

We first take up Shawmut's claim of an easement by prescription.

It is well settled that the following elements must be established for at least a period of twenty-one years duration

in order to ripen a use into the status of a prescriptive easement:

- (1) The use must be adverse.
- (2) The use must be hostile.
- (3) The use must be open and notorious.
- (4) The use must be uninterrupted and continuous for the entire prescriptive period.
- (5) The prescriptive claim asserted must be definite and clearly defined.

As to the requirement that the use must be adverse, the law is clear that where one uses an easement wherever he chooses without leave of the owner of the land over which it passes, the use is adverse. If he continues such use without interruption for twenty-one years, he acquires a title which cannot thereafter be disputed. Tarrity v. Pittston Area School District, 16 Pa. Commonwealth C. 371, 328 A 2d 205 (1974); Loudenslager v. Mosteller, 453 Pa. 115, 307 A 2d 286 (1973).

Here the evidence is clear that since at least 1916 anyone has used the strip of land in question whenever he had reason to travel from the public highway to the Shawmut Yard. Shawmut's employees have used it as a way of travel, both by foot and vehicle, to their place of work at the Interchange Yard. Shawmut itself has used the road as a way for delivery of railroad car and track parts. New automobiles and freight generally have been hauled from the Shawmut yard over this road to the public highway. The various tenants of the former diesel barn, converted

to a warehouse facility in the 1950's, have used this road as an access way in and out from the public highway to haul such things as glass, tires and building materials. And since at least 1940, this strip of land has been used by various coal operators as an access way to get from the public dock to their coal loading docks at the Shawmut yard. In short, anyone has used the road any time he wanted to as a way of travel from the public highway to the Shawmut yard and without ever seeking permission from the owner of the land.

With uncontradicted evidence of such use the plaintiff's had the burden of proving the use to have been permissive rather than adverse. Tarrity v. Pittson, supra; Stiegelman v. Pennsylvania Yacht Club, Inc., 432 Pa. 111, 245 A 2d 116 (1968); Wampler v. Shenk, 404 Pa. 395, 172 A 2d 313 (1961). The only proof offered by the plaintiffs in this regard was that their predecessor in title, Kenneth Hoffman, had no reason to object since most of those using the road were neighbors or friends and further that the use of the road did not become objectionable until 1930 when Doan started to drive heavy tandem coal trucks over the road. We note that during the period from 1970 to 1975 Kenneth Hoffman, the owner of the premises, made no objection to such use. Nor did Hoffman, who owned the premises for more than 21 years prior to the plaintiffs' ownership, ever object any time to any travel by anyone over this strip of land. But this absence of objection by Hoffman does not help the plaintiffs' cause for the law is clear that proof of absence of objection does not constitute proof of permission. Wampler v. Shenk, supra. Therefore, we believe Shawmut's proof of use has more than sufficiently carried the burden of proving that the use was adverse, not permissive.

As to the requirement that the use be hostile, it is simply meant that the claimant's use must be of such character as to confer upon the landowner whose land is being used an immediate right of action. The plaintiffs do not deny the use was hostile. Likewise, the plaintiffs do not deny the use was open and notorious.

However, the plaintiffs vigorously contend that the use made of this land which they now own, particularly the use by coal trucks, was not continuous and uninterrupted for more than 21 years. In that regard the plaintiffs point out that there was no evidence that any coal was hauled in 1958 nor from 1960 to 1970, at which time Doan started hauling coal. Shawmut counters by pointing out that there is evidence that beginning in 1940 the roadway was used by coal trucks going to the loading docks at the Shawmut yard and if in any particular year there was no coal hauled it was because of poor coal market conditions or else that no coal operators were then shipping via the Shawmut line.

We find "uninterrupted and continuous use" does not mean that the use be constant. What it does mean, however, is that the use must consist of more than sporadic trespasses and must constitute settled course of conduct consistent with the exercise of a property right. Although failure to use an easement when not needed does not prevent a continuity of use being shown by use of the easement when it is needed, nevertheless there must be such continuity of use as the claim permits. Zerby v. Allen, 215 Pa. 383, 64 A. 587 (1906). The evidence need not show a constant use in order to establish continuity; rather, continuity is established if the evidence shows a settled course of conduct indicating an attitude of mind on the part of the user or users that the use is the exercise of a property right. Keefer v. Jones,

467 Pa. 544, 359 A 2d 735 (1976).

The final element of prescriptive use, that is that the prescriptive claim asserted must be definite and clearly defined, means that to establish a right-of-way by prescription the line of the traveled road must be definite. Becker v. Rittenhouse, 297 Pa. 317, 147 A. 51 (1929). In the case before us the plaintiffs do not challenge the definition of the use.

Therefore, we believe the defendants have proven a prescriptive easement by a fair preponderance of the evidence. However, the plaintiffs assert that even if there is a prescriptive easement in this case, such easement does not include the right of use by today's large, heavy tandem type coal trucks. The plaintiffs point to cases which hold that because an easement by prescription is created by adverse use, such easement is limited by the use made during the prescriptive period. Donahue v. Punxsutawney Borough, 298 Pa. 77, 148 A. 41 (1929); Jones v. Crow, 32 Pa. 398 (1959). But this limitation is not absolute. "Normal evolution in the use of the dominant tenement" will permit reasonable increases in the burden imposed on the servient tenement. Bodman and Sabo v. Bodman, 456 Pa. 442, 321 A 2d 910 (1974); Restatement of Property, Sec. 479. In the case of Soltis v. Miller, 444 Pa. 357, 282 A. 2d 369 (1971) the Supreme Court said: ". . . we are of the view that the preferable policy is to define the enjoyment of a way of necessity with a view to the reasonable and lawful use of the land it benefits." We recognize the Soltis case involved an easement by necessity, but we know of no reason why the policy to be applied in determining the use which may be made of a prescriptive easement should be any different than that for an easement by necessity. We also note that larger uses of easements resulting from a

change in use of the dominant tenement have been recognized by numerous courts to be within the scope of the original easement. Ceran v. Bender, 357 Pa. 487, 55 A. 2d 353 (1947); Hammond v. Hammond, 258 Pa. 51, 101 A. 85 (1917).

If we were to accept the plaintiffs' argument that the roadway should not be used by today's larger, heavier trucks, we would, in effect, be holding that the roadway could not be used for coal loading purposes at all. This would deny a use which has been made of the roadway off and on since 1940. Coal is presumably being hauled today by larger, heavier trucks because of economic considerations. The smaller, lighter weight trucks which hauled coal in the 1940's, 1950's and 1960's have no doubt become economically unfeasible. Therefore, if the strip of land in question is subject to a prescriptive easement for use by coal trucks, as we believe it is, then for such use to be available at all, it must include use by the type of coal hauling trucks that are in general use today.

CONCLUSIONS OF LAW

The Pittsburgh & Shawmut Railroad Company, its servants, agents, employees, its licensees and business invitees and its successors and assigns have acquired and do enjoy an easement by prescription to pass by foot, vehicle or other means of transportation, without limitation as to the type of vehicle, over, across, along and upon the west ten feet of the premises conveyed in the Deed dated August 18, 1975 from Kenneth Henry Hoffman and Josephine Hoffman to R. Leo Ferraro and R. Edward Ferraro.

DECREE NISI

AND NOW, August 5, 1977 the Plaintiffs' Complaint in
Equity is hereby dismissed.

BY THE COURT

FILED *Edwin P. Snyder*
President Judge
AUG-5 1977
CADWALLADER M. EMERY
PRO. & CLERK of COURTS

IN THE COURT OF COMMON PLEAS OF
JEFFERSON COUNTY, PENNSYLVANIA

CIVIL DIVISION

R. LEO FERRARO and
R. EDWARD FERRARO,
Plaintiffs

vs.

No. 702 - 1975

IN EQUITY

DAVID G. DOAN, Individually
and d.b.a. DOAN COAL COMPANY
and DAVID G. DOAN and JAMES
S. DOAN, Individually and
d.b.a. RELIABLE TRUCKING &
WELDING COMPANY,
Defendants

FILED

APR 20 1978

CADWALLADER M. BERRY
PRO. & CLERK of COURTS

PRAECIPE TO ENTER DECREE NISI AS FINAL DECREE

To The Prothonotary:

Pursuant to Pa. R.C.P. No. 1519 (a), no exceptions having been
filed, enter decree nisi dated August 5, 1977, as a final decree.

Thomas D. Stauffer

James A. Weaver

Attorneys for The Pittsburg & Shawmut
Railroad Company, a Defendant