

HARKINS CUNNINGHAM LLP

Attorneys at Law

David A. Hirsh
202.973.7606
dhirsh@harkinscunningham.com

1700 K Street, N.W.
Suite 400
Washington, D.C. 20006-3804
Telephone 202.973.7600
Facsimile 202.973.7610

September 5, 2017

BY E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

244267
ENTERED
Office of Proceedings
September 5, 2017
Part of
Public Record

**Re: *Application of the National Railroad Passenger Corporation under 49 U.S.C.
§ 24308(a) – Canadian National Railway Company (Docket No. FD 35743)***

Dear Ms. Brown:

Undersigned counsel for Illinois Central Railroad Company and Grand Trunk Western Railroad Company (together, “CN”) is notifying the Board that CN has become aware that National Railroad Passenger Corporation (“Amtrak”) has violated the Protective Order in this proceeding. CN understands that Amtrak’s outside counsel provided to Amtrak employees, and Amtrak employees may have reviewed, used, and/or analyzed, information that CN designated as “Highly Confidential” under the Protective Order, including the following:

- (i) the workpapers supporting the Joint Verified Statements of Messrs. Baranowski and Fisher filed as “Highly Confidential” under seal as part of CN’s Opening Submissions on September 4, 2015;
- (ii) the workpapers supporting the Joint Verified Statements Messrs. Krueger, Doyle, and Rank, filed as “Highly Confidential” under seal as part of CN’s Opening Submissions on September 4, 2015; and
- (iii) a deposition transcript of CN employee, Harald Krueger, where Amtrak’s counsel introduced Mr. Krueger *et al.*’s Highly Confidential workpapers as exhibits and elicited information concerning those workpapers.

CN first learned of potential Amtrak violations of the Protective Order when Amtrak’s outside counsel announced, in an August 2, 2017 email, Amtrak’s plans to treat the workpapers and related deposition transcript referenced above as “Amtrak Confidential” – a redesignation

HARKINS CUNNINGHAM LLP

Attorneys at Law

Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
September 5, 2017
Page 2

that only CN is entitled to make.¹ After repeated inquiries by CN, Amtrak's outside counsel confirmed on August 21, 2017, that there had been violations of the Protective Order.

CN is greatly troubled by these violations. CN believes that it, as well as the Board, is entitled to understand the nature and extent of Amtrak's violations and misuse of Highly Confidential information, and the measures it has taken to remedy the violations. Since August 22, CN has been asking Amtrak to provide such information, including (i) the identity of the unauthorized persons who were given access to or who reviewed CN's Highly Confidential information (including any unauthorized persons who received such information from other unauthorized persons), (ii) the dates of the unauthorized disclosure or review, and (iii) the specific information disclosed or reviewed. CN also asked Amtrak to describe any remedial actions that Amtrak outside counsel and employees took to prevent unauthorized use of CN's "Highly Confidential" information.

Amtrak has said it is willing to provide some of the information sought by CN, but it has so far indicated that it will not provide all of the information sought. CN hopes that Amtrak will make full disclosure, but if it does not, it may be necessary for CN to ask the Board to compel that disclosure.

Despite Amtrak's Protective Order violations, in the interest of trying to prevent delay, CN has responded in good faith to Amtrak's belated request that CN redesignate as Amtrak Confidential the Baranowski/Fisher workpapers that relate to CN's SRS. Earlier today, CN (i) agreed to the requested post-violation redesignation, and (ii) agreed not to use Amtrak's violations prior to this redesignation as a basis to object to Amtrak's use of the

¹ The only confidentiality designations originally available under the Protective Order were "Highly Confidential" and "Confidential." After the parties filed their opening evidence, at Amtrak's request, they jointly moved for, and the Board approved, a modification of the Protective Order to create an "Amtrak Confidential" designation that CN could use "at its sole option" to redesignate selected material from Highly Confidential to Amtrak Confidential to permit access for Amtrak in-house personnel. See Protective Order, ¶ 17 (added by order served November 5, 2015). Since that category was created, CN has agreed to numerous Amtrak requests for redesignation of verified statements and documents as Amtrak Confidential.

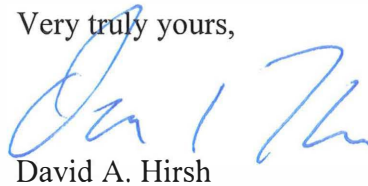
HARKINS CUNNINGHAM LLP

Attorneys at Law

Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
September 5, 2017
Page 3

Baranowski/Fisher SRS workpapers in its rebuttal submission and other subsequent filings in this proceeding. However, CN has reserved all other rights.

Very truly yours,



David A. Hirsh

Counsel for Illinois Central Railroad Company and
Grand Trunk Western Railroad Company

cc: Kevin Sheys, Nossaman LLC
Ed Fishman, Nossaman LLC
Christine Lanzon, Amtrak