

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
October 5, 2017
Part of
Public Record

STB Docket No. AB-1258

ALLOY PROPERTY COMPANY, LLC – ADVERSE ABANDONMENT –
CHICAGO TERMINAL RAILROAD IN CHICAGO, IL

ALLOY PROPERTY COMPANY, LLC’S REPLY TO CHICAGO TERMINAL
RAILROAD COMPANY’S MOTION TO COMPEL

Chicago Terminal Railroad Company’s (“CTR’s”) Motion to Compel¹ is based in large part on what it now admits was a “mistake.”² Most of the discovery requests for which CTR seeks to compel responses are ones that Alloy Property Company, LLC (“Alloy”) answered in full. It is a mystery why CTR chose to waste the Board’s and the parties’ time with a Motion that seeks to “compel” responses that it already received.³ And the fact that CTR has not withdrawn any part of its Motion despite acknowledging that it was based in part on a “mistake” is baffling.

The other claims in CTR’s Motion are equally meritless. CTR claims that it is entitled to information about Alloy’s development plans for its property and potential offers to purchase other property on the Line because Alloy’s development

¹ See Chicago Terminal Railroad Company’s Motion to Compel, *Alloy Property Co., LLC – Adverse Abandonment – Chicago Terminal R.R. in Chicago, IL*, STB AB Docket No. 1258 (filed Sept. 18, 2017) (“Motion”).

² See Exhibit 1.

³ CTR made no effort to discuss the claims in its Motion with Alloy prior to filing it. See *Consumers Energy Co. v. CSX Transp., Inc.*, STB Docket No. 42142, at 2 (STB served Apr. 6, 2016) (“The Board strongly encourages parties to meet and confer on issues such as this prior to petitioning the Board for relief.”).

and purchase of properties on the Line might create “future rail service opportunities.” Motion at 5. This theory of alleged relevance makes no sense—Alloy has made clear to CTR that it has zero interest in future freight rail service and that it will be filing an application for adverse abandonment authority next week. CTR’s curiosity about the specifics of Alloy’s development plans is not relevant to the only question that will be at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.”⁴

In short, none of the claims in the Motion are the sort of relevant, “sharply focused,” and “clearly justified” requests that are necessary to compel production of documents in an abandonment case,⁵ and the Motion should be denied.

I. ALL OF CTR’S REQUESTS FOR WRITTEN COMMUNICATIONS WITH OTHER PROPERTY OWNERS ON THE LINE WERE ANSWERED IN FULL.

The heart of CTR’s Motion is a set of wild accusations that Alloy and/or Sterling Bay⁶ are “colluding” with certain other property owners on the Line and thus that the Board must “compel Alloy to produce . . . non-privileged

⁴ *City of Chicago, IL—Adverse Abandonment—Chicago Terminal R.R. in Chicago, IL*, STB AB Docket No. 1036, at 3 (served Jun. 16, 2010).

⁵ *See Central R.R. Co. of Ind.—Abandonment Exemption—In Dearborn, Decatur, Franklin, Ripley, and Shelby Ctys., IN*, STB AB Docket No. 459 (Sub-No. 2X), at 4 (STB served Apr. 1, 1998) (“The nature of abandonment cases and the need to decide them promptly have led us to require that discovery requests be sharply focused and clearly justified. That is not the case here.”).

⁶ The Motion inaccurately claims that Sterling Bay is the “parent company” of Alloy and uses Sterling Bay and Alloy interchangeably. Motion at 4. Alloy Property Company, LLC is a joint venture in which an affiliate of Sterling Bay, LLC is a member.

communications” with those property owners. Motion at 6-7. These accusations are utterly frivolous—Alloy answered the discovery requests in question and produced all responsive documents in its possession.

The relevant discovery responses are reproduced below,⁷ and they could not have been clearer.

For General Iron, Alloy explained that it had no responsive documents:

Interrogatory 9: Identify all representatives of General Iron Industries with whom you have had email communications relating or referring to CTR or the Line.

Response: Alloy has had no email communication with any General Iron Industries representatives relating or referring to CTR or the Line.

* * *

Request for Production 5: Produce all written communications you have had with representatives of General Iron Industries that relate to CTR or the Line.

Response: Alloy has had no written communication with any General Iron Industries representatives relating or referring to CTR or the Line.

For Big Bay Lumber, Alloy explained that it had no responsive documents (and that in any event Big Bay Lumber ceased operations in 2015):

Interrogatory 11: Identify all representatives of Big Bay Lumber with whom you have had email communications referring or relating to CTR or the Line.

Response: Alloy objects to this Interrogatory as irrelevant because Big Bay Lumber ceased operations in 2015. Subject to and without waiving this objection, Alloy responds that it has had no email communication with any Big Bay Lumber representatives relating or referring to CTR or the Line.

⁷ Alloy’s discovery responses were attached as Exhibit A to the Motion.

* * *

Request for Production 7: Produce all written communications you have had with representatives of Big Bay Lumber that relate to CTR or the Line.

Response: Alloy objects to this Request for Production as irrelevant because Big Bay Lumber ceased operations in 2015. Subject to and without waiving this objection, Alloy responds that it has had no written communication with any Big Bay Lumber representatives relating or referring to CTR or the Line

For Sipi Metals Corporation, Alloy responded that it would produce responsive documents in its possession:

Interrogatory 10: Identify all representatives of Sipi Metals Corporation with whom you have had email communications relating or referring to CTR or the Line.

Response: Alloy will produce business records from which the answer to this interrogatory may be derived. *See* 49 C.F.R. § 1114.26.

* * *

Request for Production 6: Produce all written communications you have had with representatives of Sipi Metals Corporation that relate to CTR or the Line.

Response: Alloy is producing any written communications it had with Sipi Metals Corporation representatives relating or referring to CTR or the Line.⁸

⁸ The responsive document that Alloy produced was attached as Exhibit B to the Motion. {

Finally, for Burgoyne, Alloy objected to the relevance of any communications it might have had with a landowner that was “not a rail shipper on the Line,” but that in any event “no such written communications exist”:

Request for Production 8: Produce all written communications that relate to CTR or the Line that you have had with representatives of Bellas & Wachowski, the law firm that is representing Burgoyne, LLC in the matter styled *Burgoyne, LLC v. Chicago Term. R.R. Co.*, No. 2017 CH 06199 (Circuit Court of Cook County, Illinois) (filed May 8, 2017).

Response: Alloy objects to this Interrogatory [sic] because it seeks information that is irrelevant to the question at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Whether or not Alloy has had any communications with a law firm representing a party that is not a rail shipper on the Line is irrelevant to the issues before the Board and is not a proper subject of discovery. Subject to and without waiving this objection, Alloy states that no such written communications exist.

Request for Production 9: Produce all written communications that you have had with representatives of Burgoyne, LLC that relate to CTR or the Line.

Response: Alloy objects to this Request for Production because it seeks information that is irrelevant to the question at issue in this proceeding: “whether there is a present or future public need for rail service over the line and whether that need is outweighed by other interests.” *City of Chicago, IL – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036, at 3 (served June 16, 2010). Whether or not Alloy has had any communications with a party that is not a rail shipper on the Line is irrelevant to the issues before the Board and is not a proper subject of discovery. Subject to and without waiving this objection, Alloy states that no such written communications exist.

}

In short, there is nothing for the Board to “compel,” because Alloy answered the pertinent discovery requests. Indeed, CTR has admitted that it made a “mistake” by claiming that Alloy was withholding information about written communications with Burgoyne. After CTR filed its Motion, Alloy received an email from Burgoyne counsel asking for information on the status of the abandonment case and passing along a letter from the City of Chicago to CTR demanding that CTR remove rail tank cars that it had parked in the public way. *See Exhibit 1 at 3-7.* After Alloy produced this document to CTR pursuant to Request for Production No. 9, CTR asked Alloy whether it was “retracting its objection” to producing such documents. *See id.* at 1. Alloy then reminded CTR that it had never made such an objection and that the email it was producing was the only responsive document it had received. *See id.* CTR then responded, “You are correct, my mistake.” *Id.*

It is not clear why CTR has taken no action to correct the “mistake” that it repeated in its Motion. But it is clear that the Board should deny these meritless claims.

II. CTR’S REQUESTS FOR INFORMATION ON ALLOY’S DEVELOPMENT PLANS AND ANY AGREEMENTS IT MAY HAVE RELATED TO PROPERTY ON THE LINE ARE NOT RELEVANT TO THIS PROCEEDING.

Alloy’s goal in this proceeding has been clear from the outset. Alloy will file an application that demonstrates that “there is no present or future need for rail service on the Line and that abandonment of the Line is in the public interest.”⁹

⁹ Petition for Partial Waiver of Abandonment Regulations and for Exemption, *Alloy Property Co., LLC—Adverse Abandonment—Chicago Terminal R.R. in Chicago, IL*, STB AB Docket No. 1258, at 3-4 (filed June 1, 2017).

There is no doubt that Alloy does not have plans for freight rail service on any property that it currently owns on the Line or on any property that it may acquire in the future.

As a result, there is no merit to CTR's claims that it is entitled to information about Alloy's "development plans" because such information might be "relevant to what kind of future rail service opportunities exist." Motion at 4-5. Alloy can state quite definitively that its development plans do not contemplate a need for future freight rail service. There can be no better evidence of that fact than Alloy's decision to seek adverse abandonment.¹⁰ Similarly, CTR's curiosity about whether Alloy has submitted any offers or entered any agreements to purchase other property in the area of the Line could not possibly help CTR demonstrate that "there is a future need for rail service [on the Line]." Motion at 6. Alloy would not be seeking adverse abandonment if it had any plans to develop other property on the Line that might have a future need for rail service.¹¹

For these reasons, neither the information that CTR seeks about Alloy's development plans nor the information it seeks about potential Alloy offers or agreements to purchase other property on the Line constitute "information [that]

¹⁰ Moreover, public information about Alloy's planned Lincoln Yards development makes abundantly clear that Alloy is not planning to construct an industrial site that might utilize freight rail service. *See* Lincoln Yards, <http://www.lincolnyards.com/> (last visited Oct. 3, 2017).

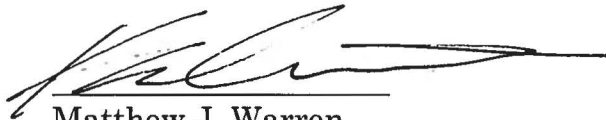
¹¹ *See Town of North Judson, Ind.—Adverse Discontinuance of Service—In LaPorte, Porter and Starke Ctys., Ind.*, STB AB Docket No. 1232, at 3-4 (STB served Aug. 3, 2014) (In light of party statements that a museum will not be a replacement rail operator, discovery requests related to that issue were not relevant and motion to compel was denied).

might be able to affect the outcome of [this] proceeding.”¹² Alloy does not intend to develop any property on the Line that will have a future need for rail service, and it will submit an application next week that will demonstrate conclusively that the public convenience and necessity require abandonment. CTR does not need discovery to confirm that the applicant seeking adverse abandonment of the Line does not itself have a future need for rail service on the Line.

CONCLUSION

For the foregoing reasons, CTR’s Motion to Compel should be denied.

Respectfully submitted,



Matthew J. Warren
Hanna M. Chouest
Marc A. Korman
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

*Counsel to Alloy Property
Company, LLC*

Dated: October 5, 2017

¹² Motion at 3 (quoting *Waterloo Ry.—Adverse Aban.—Lines of Bangor & Aroostook R.R. & Van Buren Bridge Co. in Aroostook Cnty., Me.*, Docket No. AB 124 (Sub-No. 2), et al. (STB served Nov. 14, 2013)). See also *Chesapeake and Ind. R.R. CO.—Petition for Declaratory Relief*, STB FD Docket No. 36076, at 7 (STB served May 31, 2017).

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2017, I caused the foregoing Reply to Chicago Terminal Railroad Company's Motion to Compel to be served by first class mail or more expedient method upon the following:

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., NW
Suite 717
Washington, DC 20036

David Michaud
Iowa Pacific Holdings, LLC
118 Southern Clinton Street
Suite 400
Chicago, IL 60661

Charles A. Spitulnik
Kaplan, Kirsch, Rockwell
1001 Connecticut Ave, NW
Suite 800
Washington, DC 20036


Alec Weingart

EXHIBIT 1

From: David Michaud
To: [Warren, Matthew J.; John.Heffner@strasburger.com](mailto:Warren.Matthew.J.; John.Heffner@strasburger.com)
Cc: [Chouest, Hanna](mailto:Chouest.Hanna)
Subject: RE: STB AB-1258: Alloy Responses to Discovery
Date: Monday, September 25, 2017 5:33:37 PM

You are correct, my mistake.

As an fyi, that case was decided against them on Thursday.

David Michaud
General Counsel & Vice President of Human Resources
Iowa Pacific Holdings, LLC
118. S. Clinton Street, Suite 400
Chicago, IL 60661
(312) 667-0377

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From: Warren, Matthew J. [<mailto:mjwarren@sidley.com>]
Sent: Monday, September 25, 2017 4:12 PM
To: David Michaud <MichaudD@IowaPacific.com>; John.Heffner@strasburger.com
Cc: Chouest, Hanna <hchouest@sidley.com>
Subject: RE: STB AB-1258: Alloy Responses to Discovery

Alloy never refused to answer CTM's discovery requests about written communications from Burgoyne. We stated clearly in our responses to Request for Productions 8 and 9 that "no such written communications exist." This email is the first responsive document we received.

MATT WARREN

SIDLEY AUSTIN LLP
+1 202 736 8996 (office)
+1 571 334 7736 (mobile)
mjwarren@sidley.com

From: David Michaud [<mailto:MichaudD@IowaPacific.com>]
Sent: Monday, September 25, 2017 4:40 PM
To: Warren, Matthew J. <mjwarren@sidley.com>; John.Heffner@strasburger.com
Cc: Chouest, Hanna <hchouest@sidley.com>
Subject: RE: STB AB-1258: Alloy Responses to Discovery

Is Alloy retracting its objection to providing communications with Burgoyne, LLC and/or its representatives, or is this the only one?

David Michaud
General Counsel & Vice President of Human Resources
Iowa Pacific Holdings, LLC
118. S. Clinton Street, Suite 400
Chicago, IL 60661
(312) 667-0377

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From: Warren, Matthew J. [<mailto:mjwarren@sidley.com>]
Sent: Monday, September 25, 2017 3:34 PM
To: John.Heffner@strasburger.com; David Michaud <MichaudD@IowaPacific.com>
Cc: Chouest, Hanna <hchouest@sidley.com>
Subject: RE: STB AB-1258: Alloy Responses to Discovery

John and David,

Attached is a supplemental production of a communication Alloy received last week that is responsive to CTM's discovery requests.

Matt

MATT WARREN

SIDLEY AUSTIN LLP
+1 202 736 8996 (office)
+1 571 334 7736 (mobile)
mjwarren@sidley.com

From: Chouest, Hanna
Sent: Tuesday, September 05, 2017 3:31 PM
To: John.Heffner@strasburger.com; David Michaud <MichaudD@IowaPacific.com>
Cc: Warren, Matthew J. <mjwarren@sidley.com>
Subject: STB AB-1258: Alloy Responses to Discovery

John and David,

Attached please find Alloy's Responses to CTR's First Set of Discovery Requests.

Regards,

Hanna

HANNA M. CHOUEST
Associate

SIDLEY AUSTIN LLP
+1 202 736 8395
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This e-mail is sent by a law firm and may contain information that is privileged or confidential.
If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

Warren, Matthew J.

From: Thomas J. Litwiler <TLitwiler@fletcher-sippel.com>
Sent: Monday, September 18, 2017 10:10 AM
To: Warren, Matthew J.
Subject: Alloy Property Adverse Abandonment
Attachments: Stop Sign, 6-1-17, #1.jpg; Stop Sign, 6-1-17, #2.jpg; CDOT Ltr to IP-CTR re Rail Cars 9 12 2017.pdf

Matt,

We met on the phone during a meeting with a Chicago alderman several months ago; I've been working with Burgoyne LLC in their efforts against Chicago Terminal Railroad and have obviously been following Alloy's adverse abandonment proceeding with interest. I particularly noted that CTR made no filing in response to the direction in the STB's waiver decision that CTR identify current and potential users of the line. To some degree I suppose that inaction speaks for itself, but I was wondering if you were at liberty to share any other background or communication from CTR on that subject.

I'd also be interested in your anticipated timeline for filing the adverse abandonment application, if that's something you're able and willing to share.

As I suspect you're aware, CTR has recently parked numerous empty tank cars at various locations on the line south of Alloy, including in the middle of several city streets. Those tank cars replaced a much smaller number of stored gondolas that had been there since May. The stop sign that had resided in the middle of CTR's track at Bliss Street (a picture of which you had incorporated from a Burgoyne pleading into the waiver petition) has been relocated (presumably by CTR), and that's one of the locations now occupied by tank cars. A photograph in your environmental/historic report shows the relocated sign; I'm also attaching two other pictures that show the same thing.

You may also know that the City of Chicago has demanded that CTR remove the stored tank cars from city streets. That September 12, 2017 letter is attached as well. Obviously no portion of the track is being used to serve local customers.

Thanks for your help. Kind regards.

TJL

Thomas J. (T.J.) Litwiler
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29 North Wacker Drive
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(312) 252-1508
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CHICAGO DEPARTMENT OF TRANSPORTATION

September 12, 2017

CITY OF CHICAGO

Edwin E. Ellis, Jr.
President
Iowa Pacific Holdings, LLC
118 South Clinton Street, Suite 400
Chicago, IL 60661

RE: Chicago Terminal Railroad Cars on City Public Ways

Dear Mr. Ellis:

The Chicago Department of Transportation ("CDOT") has public safety concerns about the stationary railroad cars located on on-street tracks in the vicinity of North Cherry Avenue and North North Branch Street. It is our understanding that this rail line is operated by Chicago Terminal Railroad ("CTR"), a subsidiary of Iowa Pacific Holdings, LLC ("Iowa Pacific"). In the past few days, CDOT and other City departments have received complaints from building owners in the vicinity of these stationary rail cars. On September 7, 2017, CDOT staff conducted a site visit and verified that tank cars are being stored on the public way at this location.

CDOT has concerns about such railroad car storage, on tracks fully located in the public way. This situation obstructs and increases safety risks for vehicular, bicycle and pedestrian traffic. CDOT continues to investigate the situation and reserves the right to pursue all legal remedies available to it.

The City granted the right to locate tracks and operate a rail line at this public way location through a June 12, 1872 City Council Ordinance, attached hereto as Exhibit A. The Ordinance makes clear that all rights and obligations apply to any successors of the original grantee, including in this case, CTR. The City hereby puts CTR and Iowa Pacific on notice that they are subject to indemnification requirements in the event of any incidents that occur at the location of the stored railroad cars.

Specifically, Section 4 of the Ordinance contains the following indemnity provision:

The permission and authority hereby granted are upon the further express condition that the Chicago and Pacific Railroad Company shall, and will forever indemnify, and save harmless, the city of Chicago, against and from any and all damages, judgments, decrees and costs and expenses of the same which it may suffer, or which may be recovered or obtained against said city for, or by reason of the granting of such privileges and authority, or for, or by reason of, or growing out or resulting from the passage of this ordinance, or any matter or thing connected therewith, or with the exercise by said company of the privileges hereby granted.

The City will fully exercise all indemnity rights under Section 4 when and if necessary.

In addition to its indemnity rights, CDOT reserves the right to pursue all legal remedies available to it. These may include but are not limited to rights under the Ordinance referenced above, enforcement of the Municipal Code of Chicago, enforcement of the Illinois Street Railroad Right of Way Act, 610 ILCS 115/1 *et seq.*, and other Illinois statutory provisions, and any other available actions at common law. If

the cars are not moved, the City may also seek intervention by state or federal agencies, including but not limited to the Illinois Commerce Commission, the Federal Railroad Administration, and the Surface Transportation Board. Given the public safety and traffic obstruction issues created by the current location of the cars, CDOT demands that CTR remove all railroad cars currently being stored on the public way.

Thank you for your prompt attention to this matter.

Sincerely,



Rebekah Scheinfeld, Commissioner
Chicago Department of Transportation

cc: David Michaud, General Counsel, Iowa Pacific

Luann Hamilton, Deputy Commissioner, CDOT
Mike Simon, Deputy Commissioner, CDOT
Jeff Shriver, Project Administrator, CDOT
Joe Alonzo, Coordinating Planner, CDOT
Diane Pezanoski, Deputy Corporation Counsel, Department of Law
Jared Policicchio, Assistant Corporation Counsel, Department of Law



ALLOY-CTR-000005



ALLOY-CTR-000006