

ORIGINAL

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1194
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

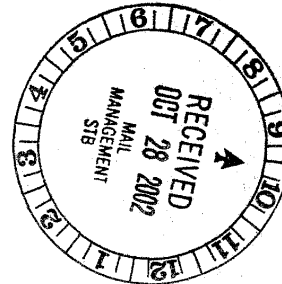
THOMAS F. MCFARLAND

October 25, 2002

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

206499



Re: STB Finance Docket No. 34236, *Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc.*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Opening Statement, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

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Office of Proceedings

OCT 28 2002

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Public Record

Thomas F. McFarland
*Attorney for Bolen-Brunson-Bell
Lumber Company, Inc.*

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FINANCE DOCKET
NO. 34236

BOLEN-BRUNSON-BELL LUMBER COMPANY, INC.
3175 Johnson Avenue
P.O. Box 11205
Memphis, TN 38111

Complainant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Complainant

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BEFORE THE
SURFACE TRANSPORTATION BOARD

BOLEN-BRUNSON-BELL LUMBER	)	
COMPANY, INC.,	)	
<i>Complainant,</i>	)	
v.	)	FINANCE DOCKET
	)	NO. 34236
CSX TRANSPORTATION, INC.,	)	
	)	
<i>Defendant.</i>	)	

OPENING STATEMENT

Pursuant to the Board's procedural decision served September 5, 2002, BOLEN-BRUNSON-BELL LUMBER COMPANY, INC. (BBB) hereby files this Opening Statement in support of its Formal Complaint filed July 19, 2002.^{1/}

BACKGROUND

It is alleged in the complaint that on or shortly after March 1, 2001 to date, and on a continuing basis, CSX Transportation, Inc. (CSXT) has failed to provide rail transportation to BBB's place of business on reasonable request in violation of 49 U.S.C. § 11101(a). A cease and desist order and damages are sought.

BBB is a family-owned wholesale distributor of lumber and forest products. Its place of business, commonly known as Bellwood Reload, is located at 3175 Johnson Avenue, in Memphis,

^{1/} Simultaneously with the filing of the complaint, BBB filed a petition for partial revocation of the general exemption for rail transportation of lumber and wood products, which otherwise would prevent the Board from entertaining the complaint.

Tennessee. Bellwood Reload is located at Milepost (MP) 233.1 on CSXT's Cordova rail line. That line extends 13.34 miles from point of connection with a main line at Memphis (MP 224.0) to Cordova, TN (MP 210.66).

On March 1, 2001, CSXT embargoed the Cordova line, citing unsafe conditions in bridges at MP 223.3 and MP 218.5. That embargo remains in effect at present, 20 months later.

On August 24, 2001, CSXT filed a petition for exemption of abandonment of the Cordova line. BBB partially opposed that petition as to the approximate 1-mile segment between the main line and Bellwood Reload. The Board denied that petition as insufficiently supported. *CSX Transportation, Inc. -- Aban. Exempt. -- (betw. Memphis and Cordova) in Shelby County, TN*. 2001 STB LEXIS 943 (STB Docket No. AB-55 [Sub-No. 590X], dec. served Dec. 12, 2001).

On March 29, 2002, CSXT filed a petition for exemption of discontinuance of rail service on the 12.24-mile portion of the Cordova line between MP 222.9 and Cordova (MP 210.66). That petition, which did not include Bellwood Reload, was unopposed. The Board granted that petition. *CSX Transportation, Inc. -- Discon. Exempt. -- (betw. East of Memphis and Cordova) in Shelby County, TN*, 2002 STB LEXIS 422 (STB Docket No. AB-55 [Sub-No. 615X], dec. served July 17, 2002).

On July 10, 2002, CSXT filed an application for authority to discontinue rail service on the remaining 1.1-mile segment of the Cordova line between MP 224.0 and MP 222.9. The proceeding in regard to that application has been docketed as *CSX Transportation, Inc. -- Discontinuance -- at Memphis, in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 618). That application, which includes Bellwood Reload, was opposed by BBB. The evidentiary record in that proceeding has been completed. A Board decision on the merits of that application is pending.

The complaint in the subject proceeding was filed on July 19, 2002. The Board's procedural decision in the matter was issued on September 5, 2002. This is BBB's Opening Statement filed pursuant to that decision.

BBB's complaint was not filed until after lengthy negotiations for settlement were unsuccessful. It would not be productive for the Board to provide for further negotiation in view of those prior extensive efforts to resolve this matter informally.

BBB'S POSITION

BBB hereby clarifies that it does not challenge the reasonableness of CSXT's initial embargo of the Cordova line. BBB recognizes that as a matter of safety policy, rail carriers must be given substantial leeway to determine in the first instance that unsafe conditions warrant an embargo. Therefore, BBB acknowledges that when first imposed, the embargo justified CSXT's failure to provide rail service.^{2/} However, the effect of that acknowledgment is more conceptual than practical because the embargo became unjustifiable in short order.

BBB's position is that as applied to rail transportation to Bellwood Reload, the embargo became unreasonable no more than four days after it was first declared. That is the maximum length of time that it would have taken for CSXT to make interim repairs to Bridge ONI 223.3 to restore rail service. As will be shown, such repair was dictated upon a balancing of the criteria to be considered in determining whether an embargo continues to be reasonable. CSXT was physically and financially able to repair the bridge. Repair of the bridge would not have required it to incur substantial costs in either time or money. The embargo thus ceased to be a valid defense to CSXT's

^{2/} That acknowledgment constitutes a partial amendment of the complaint (e.g., Paragraph IX: "From its inception, the embargo of rail service to Bellwood Reload was not justified by the alleged unsafe condition of Bridge 223.3").

failure to provide rail service as of the time when repairs to Bridge ONI 223.3 should have been completed. The Board should order CSXT to restore rail service forthwith, and to pay damages as established in the record, plus interest.

APPLICABLE LEGAL PRINCIPLES

A. Liability

Rail carriers are required by 49 U.S.C. § 11101(a) to provide transportation or service on reasonable request. That is a statutory expression of the rail common carrier service obligation that has existed at common law since the onset of rail transportation in the United States. The provision of the statute stating the service obligation was not changed by the ICC Termination Act of 1995.

The statute is not violated without a request for rail transportation, but such a request need not be formal nor in writing. Where rail service has been embargoed, expressions of desire and intent to use the rail line and requests for reinstitution of rail service are tantamount to specific requests for rail transportation. *Overbrook Farmers Union - Petition for Declar. Order*, 5 I.C.C.2d 316, 325 (1989). A shipper is absolved from making a request for rail transportation when a carrier has repudiated the shipper's right to that transportation. *Montgomery Ward & Co. v. Northern Pac. Term. Co.*, 128 F.Supp. 475, 502, n.47 (D. Ore., 1953). The sufficiency of a request for rail transportation is established by a carrier's knowledge of a shipper's demand for service, the shipper's known necessities and the carrier's own previous practice of receiving goods from the shipper for transportation. *Id.*

The statutory service obligation is not absolute. A valid embargo relieves a carrier of its obligation to provide service. *ICC v. Chicago, Rock Island & Pacific RR Co.*, 501 F.2d 908, 911 (8th Cir. 1974). An embargo is a temporary emergency measure issued on a rail carrier's initiative

when a disability makes it unable to properly perform its common carrier duty. *ICC v. Baltimore & Annapolis R.R. Co.*, 398 F.Supp. 454, 462 (D, Md., 1975); *aff'd*, 537 F.2d 77 (4th Cir. 1975), *cert. den* 429 U.S. 859 (1976); *Chicago N.W. Ry. Co. v. Union Packing Co.*, 373 F.Supp. 734, 736-737 (D, Neb., 1974). A valid embargo is an appropriate defense to an action for failure to provide transportation under § 11101(a). *ICC v. Baltimore & Annapolis R.R. Co.*, *supra*, 398 F.Supp at 467.

Although a valid embargo excuses the service obligation, it does not terminate the carrier's duty. *Gibbons v. United States*, 660 F.2d 1227, 1234 (7th Cir. 1981). To be valid, an embargo must at all times be reasonable. If an embargo becomes unreasonable, the carrier is no longer excused from its duty to provide service and may be liable for damages for failure to provide transportation on reasonable request. *ICC v. Baltimore & Annapolis RR Co.*, *supra*, 398 F.Supp. at 463; *Ethan Allen, Inc. v. Maine Central RR Co.*, 431 F.Supp. 740, 743 (D, Vt., 1977).

Whether an embargo has become unreasonable revolves largely around the length of the service cessation and the intent of the rail carrier. An intent quickly to restore service would support a legitimate embargo, while a lengthy embargo with no intent to restore service in a reasonable time would favor a finding that the embargo became unreasonable. Often, the cost of repairs, compared to both the amount of traffic on the line and the financial condition of the carrier, has been critical to the conclusion. Usually, where the embargo is a long one, and the cost of repairs not substantial, invalid embargoes have been found. *Overbrook Farmers Union - Petition for Declar. Order*, *supra*, 5 I.C.C.2d at 322-323 and note 15 (1989).

The Board balances those criteria in determining the reasonableness of an embargo. However, the balancing process in embargo cases is considerably different from the more familiar abandonment balancing process. The abandonment process balances the long-term effect of those

criteria. The embargo process weighs them in the short-term. That was recently made clear in *GS Roofing Products Co. v. STB*, 143 F.3d 387 (8th Cir. 1998) (“GS case”). The Court there reversed the Board’s finding in *Gifford-Hill & Co. et al. v. Arkansas Midland RR et al.*, 2 S.T.B. 89 (1997), that an embargo continued to be reasonable as a defense to an action for failure to provide transportation on reasonable request. The Court emphasized that the Board’s decision erroneously considered the long-term effect of the embargo balancing criteria.

Thus, the Court in the *GS* case held that the “cost-of-repair” criterion refers to “minor interim repairs” that would permit short-term resumption of service while long-term options are considered, not major repairs that might be necessary for successful long-term operations, viz. (143 F.2d at 393-394, emphasis added):

... (N)otions of long-term feasibility have no place in a proceeding to determine the reasonableness of an embargo. An embargo becomes unreasonable if a railroad is physically and financially able to resume services (citations omitted). This is true regardless of the long-term prospects of a particular line. If service can be resumed at safe levels without substantial expenditure of time or money, a railroad should not be permitted to refuse to resume service simply because extensive improvements might be necessary for the long-term success of the line.

* * *

... Arkansas Midland could have made minor interim repairs that would have allowed the line to operate as it had. To make those repairs would not have required Arkansas Midland to incur substantial costs in either time or money . . .

In a similar vein, the Court in the *GS* case stated that the “amount-of-traffic” criterion does not refer to long-term profitability of a rail line. The Court explained that while future unprofitability is a proper consideration in abandonment proceedings, a rail carrier cannot justify an embargo on the ground that operations would be unprofitable or less profitable than other

operations in the long term, citing *Ethan Allen, Inc. v. Maine Central RR Co.*, *supra*, 431 F.Supp. at 743 (143 F.3d at 394):

... Profitability of a railroad operation is a proper consideration in determining whether public necessity and convenience permit the granting of approval to abandon (citation omitted). Here, however, we are not dealing with a case in which a railroad is seeking to abandon a line. The sole question before the Board was whether Arkansas Midland's embargo was reasonable. An embargo may not be justified 'solely on the grounds that to continue to provide service would be inconvenient or less profitable ...'

The Court in the *GS* case also made it clear that an embargo cannot be justified on the ground that the rail carrier is pursuing long-term options for the line, such as abandonment, sale for continued rail operation or raising funds for rehabilitation. The Court explained that the rail carrier is to first restore service if the repairs required to do so can be made without substantial cost, and only then consider those long-term options, viz. (143 F.3d at 394, emphasis added):

... Arkansas Midland could have made minor interim repairs that would have allowed the line to operate as it had. To make those repairs would not have required Arkansas Midland to incur substantial costs in either time or money. In the meantime, the railroad was free to explore its long-term options, including the possibility of selling the line, pursuing abandonment proceedings, or raising funds for a rehabilitation project.

The Court was following established precedent in so holding. A rail carrier cannot avoid liability for an unreasonable embargo by seeking abandonment authorization. *ICC v. Maine Central Railroad Co.*, 505 F.2d 590, 595 (D, Vt., 1974); *Overbrook Farmers Union - Petition for Declar. Order*, *supra*, 5 I.C.C.2d at 322. The mere search for a substitute rail operator offers no solace to a shipper, nor does it meet a carrier's common carrier obligation. *Louisiana Railcar, Inc. v. Missouri Pacific R. Co.*, 5 I.C.C.2d 542, 547 (1989).

The Court in the *GS* case identified overriding considerations in determining the reasonableness of an embargo, as follows (143 F.3d at 392):

... If such conditions (that prevented service) can be easily rectified, the embargo will not be valid beyond a reasonable time necessary to restore services. See *Ethan Allen*, 431 F.Supp. at 744. The cost of repairing a line to safe operating condition, and the carrier's ability to physically and financially carry out such repairs, are keys to the continuing reasonableness of an embargo ...

B. Damages

It is provided in 49 U.S.C. § 11704(b) that a rail carrier is liable for damages sustained by a person as a result of a carrier's act or omission in violation of a provision of the rail portion of the Interstate Commerce Act, as amended.

Where a rail carrier has been shown to have violated 49 U.S.C. § 11101(a) by failing to provide transportation on reasonable request, damages are awarded for the period between the date on which the rail line should have been restored to service and either the date on which service was actually restored, or the date of a final agency decision authorizing abandonment or discontinuance of service on the line. *Caddo Antoine and Little Missouri R. Co. -- Feeder Line Acq. -- Arkansas Midland R. Co. Line betw. Gurdon and Birds Mill, AR*, 2000 STB LEXIS 252 at *38 (F.D. No. 32479 et al., dec. served May 5, 2000), ("*Caddo Antoine* decision"), *rev'd on other grounds sub nom. GS Roofing Products Co. v. STB*, 262 F.3d 767 (8th Cir. 2001); *Ethan Allen, Inc. v. Maine Central R. Co.*, *supra*, 431 F.Supp. at 744.

Damages awardable for violation of 49 U.S.C. § 11101(a) are all losses proximately caused by the violation that are sufficiently supported in the record. *Louisiana Railcar, Inc. v. Missouri Pacific R. Co.*, *supra*, 5 I.C.C.2d at 548-550, 7 I.C.C.2d 30, 35-43 (1990). Specifically included are additional costs incurred as a result of use of alternative transportation. *Caddo Antoine* decision,

supra, 2000 STB LEXIS 252 at *48. Also included are lost profits on business no longer handled as a result of loss of rail service if sufficiently established in the record, *GS Roofing Products Co. v. STB*, *supra*, 262 F.3d at 778.

Interest is to be awarded on all damages based on the U.S. Government securities rate compounded quarterly, as provided by 49 C.F.R. § 1141.1. *Louisiana Railcar, Inc. v. Missouri Pacific R. Co.*, *supra*, 7 I.C.C.2d at 44.

Principles governing mitigation of damages are set out in *Louisiana Railcar, Inc. v. Missouri Pacific R. Co.*, *supra*, 7 I.C.C.2d at 34-35. A party suffering a loss from a breach of duty must do what a reasonable man would do to mitigate the loss. The burden of proof is on a breaching party to show that a complaining party did not take reasonable steps to mitigate a loss. While it is a question of fact whether there was a reasonable effort to mitigate a loss, there are clear limits to what must be done in mitigation. An injured party has no duty to mitigate until a breaching party has definitively repudiated its duty. Consequently, it may well be reasonable for an injured party to rely on performance by the other party even after a breach of duty, where the breach is accompanied by assurances that performance will be forthcoming. An injured party need not take steps to mitigate a loss if taking that action would cause undue inconvenience or would disrupt that party's business. Therefore, an injured party need not cease business activity where cessation would unreasonably injure some other interest of that party.

RELEVANT FACTS

A. Liability

1. Cost Of Repairs^{3/}

Rail service could have been safely restored over the subject rail line if minor interim repairs were made to Bridge ONI 223.3 consisting of posting^{4/} three pilings (two in Bent No. 3 and one in Bent No. 4). The cost of those repairs would have been \$4,719. It would have taken no more than one day to complete those repairs.

A June, 2002 CSXT bridge inspection report stating that critical conditions in Bent Nos. 3 and 4 of Bridge ONI 223.3 warrant taking the rail line out of service cannot be reconciled with a January, 2001 CSXT bridge inspection report that did not identify conditions in that Bridge that required immediate repair or embargo of the line. Even giving credence to the June, 2002 report, it does not follow that repairs to all bridge components marked as "reject" in that report were required in order to restore safe rail operations. However, assuming that all nine pilings and both caps marked as "reject" in that report required repair for restoration of safe rail service, that is the maximum quantity of repairs supportable in the record. The cost of those repairs would have been \$17,753. It would have taken no more than four days to complete those repairs.

^{3/} The facts in this subsection are supported by the verified statement of Harvey H. Stone, P.E., an expert on design and repair of railroad bridges, copy of which is attached to this Opening Statement as Appendix 1.

^{4/} Posting means cutting out the decayed portion of a piling and patching it. (Applic., Vol. 1 at 46).

2. Intent Of The Railroad^{5/}

Rail carriers rarely acknowledge that in imposing an embargo they intended to cease service indefinitely rather than suspend service temporarily. Consequently, it is usually necessary to infer a carrier's intent on the basis of objective evidence in the record. However, that is not necessary here. In its Answer to the Complaint filed August 8, 2002, CSXT explicitly acknowledged that it had (and has) no intention of repairing Bridge ONI 223.3 to restore rail service, either before or after its petition for exemption of abandonment of the line was denied. On both pages 5 and 7 of its Answer, referring to its intent before and after denial of that petition, CSXT stated:

... CSXT decided not to expend the funds necessary to repair the Bridge ...

Without question, therefore, CSXT made a calculated decision from the start, which is still its intent, to use the embargo as a means to cease rail service indefinitely.

3. Length Of The Embargo^{6/}

As of the filing of this Opening Statement, the embargo has been in effect for 20 months. That length of time is all out of proportion to the short time and minor cost that it would have taken to repair Bridge ONI 223.3 to restore service. The disproportionate length of the embargo corroborates CSXT's intent to use the embargo as a means to cease service on the line indefinitely. It is especially meaningful that the embargo has remained in effect for over nine months after the effective date of the Board's decision denying an exemption for abandonment of the line. That

^{5/} The facts in this subsection are supported by statements made in CSXT's Answer to the Complaint, filed August 8, 2002.

^{6/} The facts in this subsection are supported by publicly-available information regarding the effective date of CSXT's embargo of its Cordova rail line.

indicates disregard for the Board's abandonment process, as well as for the common carrier service obligation.

4. Amount Of Traffic On The Line^{2/}

Attached to this Opening Statement as Appendix 2 is a copy of Exhibit G that was filed as part of CSXT's Petition for Exemption of Abandonment of the Cordova line in Docket No. AB-55 (Sub-No. 590X). That exhibit shows that 589 carloads were originated or terminated on the Cordova line in 1999, 483 carloads in 2000, and 44 carloads in the first two months of 2001. No traffic has been transported over the line since March 1, 2001 due to CSXT's embargo.

All of that traffic except BBB's originated or terminated on the portion of the Cordova line on which rail transportation has been authorized to be discontinued by virtue of the Board's decision in Docket No. AB-55 (Sub-No. 615X). Therefore, in the event that rail service were to be restored on the subject line, that overhead traffic would no longer move over Bridge ONI 223.3. Instead of 482 cars that moved over that Bridge in 2000, only BBB's 198 cars would move over the Bridge in the future (less than half the prior volume). It stands to reason that Bridge ONI 223.3 would be better able to physically accommodate that lesser volume of traffic than the heavier traffic volume that historically was transported over that bridge.

^{2/} The facts in this subsection are supported by information filed by CSXT in a related Board proceeding.

5. Financial Condition Of The Carrier^{8/}

CSXT is a Fortune 500 transportation company in sound financial condition. Attached to this Opening Statement as Appendix 3 is a copy of CSXT's "Results Of Operations" for 2001. Appendix 3 shows that CSXT had net railway operating income of \$360,220,000 in 2000 and \$456,408,000 in 2001.

6. Physical Ability Of The Carrier To Repair The Bridge^{9/}

CSXT has been physically capable of repairing Bridge ONI 223.3 since the embargo was first declared. In March, 2001, CSXT employed 661 persons systemwide whose duties include the repair and/or replacement of railroad bridges. Of that total, 111 persons were employed in the Midwest Region, which is the Region in which Bridge ONI 223.3 is located.

7. Requests For Rail Service^{10/}

From the beginning of the embargo and on a continuous basis, Mr. Noonon Greene of BBB made Mr. Bill Provident, CSXT's Director of Product Performance, Midwest Region, and later Mr. Mike Katula of CSXT, aware that BBB desired and intended to continue to ship by rail over the line. Mr. Greene requested those CSXT representatives to cause CSXT to remove the embargo and to restore rail service. CSXT was well aware that prior to the embargo, BBB had been a significant

^{8/} The facts in this subsection are supported by publicly-available reports filed by CSXT and submitted in response to discovery.

^{9/} The facts in this subsection are supported by information submitted by CSXT in response to discovery.

^{10/} The facts in this subsection are supported by the verified statement of Robert J. (Bob) Bell, attached to this Opening Statement as Appendix 4, at 5-6.

and consistent user of the involved rail transportation. CSXT failed to reinstate rail service in response to BBB's requests.

On a number of occasions during the pendency of the embargo, CSXT representatives stated to Mr. Greene that CSXT was attempting to arrange for alternate transportation for BBB. On one such occasion, Mr. Katula of CSXT requested that Mr. Greene identify the physical facilities that BBB would require to conduct its reload business at another location. Although Mr. Greene provided that information, CSXT did not follow up with any proposal. Throughout the embargo, CSXT made it known to BBB that CSXT was not going to repair Bridge ONI 223.3 in order to restore rail service on the line.

B. Damages^{11/}

1. Nature And Extent Of Injury

Damages suffered by BBB as a result of CSXT's failure to provide rail transportation consist of lost profits on reload business no longer handled by BBB, and additional charges for reloading service on business for BBB's own account.

a. Lost profits - reload business

Inability to receive shipments by rail has resulted in loss of all BBB's reload business. BBB's reload customers were retail lumber dealers in the Memphis area who lack the ability to receive forest products directly by rail. Traffic in BBB's reload business was consigned to the retail dealers, not BBB. Forest products consigned to those dealers would be delivered by rail to Bellwood Reload. BBB would unload and store those products. The

^{11/} The facts in this subsection are supported by Mr. Bell's verified statement, Appendix 4 hereto, at 1-5 and Appendices RJB-1 to RJB-3.

retail dealers would pick the products up from time to time in small trucks, as needed.

When the embargo made it impossible to receive rail shipments at Bellwood Reload, BBB was no longer able to conduct its reload business.

BBB received \$500 as compensation for each reloaded railcar. Customers were willing to pay that amount because the total of their rail freight charges plus that amount was considerably less than the total freight charges that they would have paid for truck transportation directly from origin to their places of business. In paying a charge for a reload service, therefore, retail dealers were paying primarily for BBB's ability to take rail delivery at a nearby location, rather than for physical services provided by BBB. Except for minimal fuel costs for forklifts used in unloading, there were no costs that were directly assignable to BBB's reload operation. That operation was conducted with personnel and equipment time and storage space that were available after the conduct of BBB's business for its own account. BBB's costs for personnel, equipment and storage thus were essentially the same whether or not the reload business was handled. Consequently, the revenue received by BBB was tantamount to the profit that was lost when loss of rail service prevented BBB's receipt of rail shipments at Bellwood Reload.

But for CSXT's refusal to provide rail service, BBB was likely to have continued to have received 180 carloads of forest products per year in its reload business at Bellwood Reload. That is based on BBB's actual receipt of a total of 198 carloads by rail at Bellwood Reload in 2000 (the last full calendar year before the embargo), 180 of which were received in BBB's reload business. The volume of rail traffic actually received by BBB in the first two months of 2001, immediately before the embargo, would also amount to 198 carloads

when annualized ($33 \text{ cars} \div 2 \text{ mos.} \times 12 \text{ mos.} = 198$). In the proceeding on CSXT's application for authority to discontinue rail service to Bellwood Reload, CSXT projected future rail traffic to Bellwood Reload at 198 carloads per year, and BBB agreed with that projection.

Based on the foregoing, BBB has lost profits of \$90,000 per year as a result of loss of its reload business (\$500 per car x 180 cars per year). From the inception of the embargo on March 1, 2001 through September 30, 2002, the total of lost profits has been \$127,500 ($\$90,000 \div 12 \times 17 \text{ months}$). Lost profits will continue during the pendency of this complaint.

b. Reloading charges - business for BBB's own account

BBB formerly received forest products by rail at Bellwood Reload that were for BBB's own account (in addition to railcars for reload customers). That traffic was consigned to BBB, not retail dealers. Since the embargo, BBB has received those products in rail-truck service as a reload customer. Reloading of that traffic has been performed at Leewood Yard, at the Memphis yard of Canadian National Railroad (CN) or at a CN team track known as Peebles track. Reloading at the CN yard is performed by GST Corporation. Reloading at Leewood Yard and Peebles is performed by L&D Transports. In all instances, BBB has incurred additional charges on reloaded shipments compared to prior receipt directly by rail.

Since CSXT's failure to provide rail service to Bellwood Reload, BBB has paid a charge of \$500 per carload to L&D Transports for reloading of forest products for BBB's own account at Leewood Yard or Peebles that BBB formerly received directly by rail at

Bellwood Reload. BBB paid GST Corporation a reloading charge that varied between \$5.50 and \$6.50 per 1000 board feet of forest products. The rail freight charges to the reload locations were the same as the rail freight charges that would have applied for direct rail delivery at Bellwood Reload. Therefore, the reloading charges constitute added charges as a result of CSXT's failure to provide rail service to Bellwood Reload.

Between the inception of the embargo and September 30, 2002, inclusive, BBB has paid a total of \$13,500 in reloading charges to L&D Transports and \$12,106 in such charges to GST Corporation. BBB will continue to incur reloading charges on traffic for its own account during the pendency of this complaint.

2. Mitigation

BBB acted reasonably in the circumstances to mitigate its damages.

a. reload business

BBB was not able to mitigate the loss of profits from its reload business. It was not feasible for BBB to conduct a reload business at another location. Bellwood Reload is BBB's only distribution facility. BBB could not successfully conduct a reload business at CSXT's Leewood Yard or at other rail-served locations in the Memphis area that lack adequate indoor storage space and office facilities. Without indoor storage, forest products would have to be transloaded from railcars directly onto trucks. There are approximately three truckloads of forest products for each railcar. The small trucks used for intermittent customer pickup from indoor storage would not be feasible for that quantity of continuous truck transportation. BBB does not own any trucks of the carrying-capacity required. Consequently, BBB would have had to hire trucks to deliver the products to reload

customers. The resulting trucking costs would have more than offset the revenue received by BBB for its reload service.

Some of BBB's former reload business is being reloaded at CSXT's Leewood Yard, but that business is being reloaded by a motor carrier, L&D Transports, who has sufficient trucks of the size required to conduct that business efficiently. BBB does not derive any revenue from that reload business. Railcars being reloaded by L&D Transports are consigned to some of BBB's former reload customers "care of" BBB. CSXT notifies BBB of arrival of those railcars at Leewood Yard. BBB in turn notifies L&D Transports and the reload customer. L&D transloads the products from railcars to trucks, and transports the products by truck to the retail dealers' places of business. BBB does not do any reloading. The products are not transported to or from Bellwood Reload. BBB acts only as a "notify" party as an accommodation to some of its former reload customers, who remain customers of BBB's business for its own account.

(b) business for BBB's own account

The rail-truck transportation used by BBB on traffic for its own account was the lowest-cost alternative to direct rail transportation. Direct truck transportation would have been much costlier. BBB thus acted reasonably in receiving shipments in rail-truck service.

APPLICATION OF LEGAL PRINCIPLES TO THE FACTS

1. CSXT HAS BEEN SHOWN TO HAVE VIOLATED 49 U.S.C. § 11101(a)

A. BBB Reasonably Requested CSXT To Provide Rail Transportation, But CSXT Failed To Do So

The Board should find that BBB reasonably requested CSXT to provide rail transportation to Bellwood Reload within the meaning of 49 U.S.C. § 11101(a). The bases for that finding are (1) that BBB explicitly made known to CSXT its desire and intent to make rail shipments over the line; (2) that BBB explicitly requested CSXT to remove the embargo and reinstitute rail service; (3) BBB's consistent significant prior use of the rail line; and (4) CSXT's explicit refusal to repair Bridge ONI 223.3 in order to restore rail service.

BBB's actions in the above respects were tantamount to specific requests for rail transportation in the circumstances. That was made clear in *Overbrook Farmers Union - Petition for Declar. Order, supra*, where the ICC said (5 I.C.C.2d at 325):

... Realistically, Overbrook Farmers could only indicate to MP that it was interested in transporting certain shipments to or from points on the line, assuming appropriate arrangements for service from the on-line origin or to the on-line destination could be made. In view of the various MP-imposed strictures, both overt and implied, we believe the particular efforts exerted by the cooperative in its discussions with MP related to individual rail transportation movements and the reinstitution of direct rail service on the line are equivalent to specific requests for rail transportation service ...

In addition, the reasonableness of BBB's requests for rail transportation was established by virtue of CSXT's familiarity with BBB's rail transportation requirements and BBB's prior extensive use of the rail line. Moreover, CSXT's refusal of BBB's requests that it reinstitute rail service was a repudiation of BBB's right to rail transportation, which excused BBB from requesting rail service.

Those points were made by the Court in *Montgomery Ward & Co. v. Northern Pac. Term. Co.*, *supra*, viz. (128 F.Supp. at 502):

The question of reasonable request for service is next for consideration . . . As to outbound shipments, there must have been a reasonable request for receipt at the plant and transportation to the line equipment of the carrier. Such request was conclusively established by the knowledge of the individual carriers as to the demands of Wards, its known necessities and the carrier's own previous practice of receiving goods from the establishment. In any event, repudiation by the carriers absolved Wards from making the request (footnote omitted).

A contrary finding is not suggested by the Board's decision in *CSX Transp., Inc. -- Aban. -- between Bloomingdale and Montezuma, in Parke County, IN, (embracing Montezuma Grain Co. v. CSX Transp., Inc.)*, 2002 STB LEXIS 535 (STB Docket No. AB-55 [Sub-No. 486], dec. served Sept. 13, 2002) ("*Montezuma case*"). In dismissing a complaint alleging a violation of 49 U.S.C. § 11101(a) in that proceeding, the Board said (2002 STB LEXIS 535 at *21):

A reasonable request (for transportation) is one that is specific as to the volume, commodity, and time of shipment.

The Board found that the complaining shipper's generalized request for replacement of a crossing diamond and for CSXT to agree to provide cars, rates and service for unspecified traffic at some unspecified future time did not constitute a request for service requiring an immediate response, i.e., that such was not a reasonable request for rail transportation within the meaning of 49 U.S.C. § 11101(a).

The case at hand is readily distinguishable from the *Montezuma* case on that point. The volume, commodity and time of shipment of BBB's traffic were well known to CSXT by virtue of BBB's consistent and significant use of the rail line right up to the time that it was embargoed. The rail line in the *Montezuma* case had not been used for almost four years at the time of the grain

company's request for rail service. Whether or not it was reasonable to require the grain company to define the parameters of its transportation request in that circumstance, it is clear that any such requirement would not have served a legitimate purpose in the case at hand. As stated by the Court in *Montgomery Ward & Co. v. Northern Pac. Term. Co.*, *supra*, 128 F.Supp. at 502, the reasonableness of a shipper's request for transportation can be conclusively established by a carrier's knowledge of a shipper's demands for transportation and the carrier's previous practice of providing transportation for that shipper. That is the situation in the case at hand.^{12/}

B. CSXT's Embargo Ceased To Be A Valid Defense No More Than Four Days After It Was Imposed

Application of the balancing process described in the *GS* case establishes conclusively that CSXT's embargo of rail service on the subject line became unreasonable no more than four days after it was imposed, and thus ceased to be a valid defense to the action for violation of 49 U.S.C. § 11101(a) as of that time. Those four days correspond to the maximum length of time that it would

^{12/} The statement that requests for transportation under 49 U.S.C. § 11101(a) must be specific as to volume, commodity and time of shipment appears to be unduly broad. That statement is not supported by the two decisions cited by the Board, neither of which arose under § 11101(a). The issue in both of those cases was whether class exemptions for abandonment of out-of-service rail lines should be revoked in view of alleged requests for rail service during the out-of-service periods. The requirement of specificity in that context does not necessarily mean that similar specificity is required in regard to requests for transportation under § 11101(a). There had been no prior decisions in which it was found that a request for transportation under § 11101(a) was deficient as insufficiently specific in regard to volume, commodity or time frame of traffic to be transported. The broad statement that such specificity is required is difficult to reconcile with the findings in the *Overbrook* and *Montgomery Ward* cases quoted above to the effect that requests for rail transportation were legally sufficient under § 11101(a) without regard to specific identification of traffic volume, commodity or time frame. Where a carrier has embargoed a rail line and the shipper has made extensive use of the line right up to the time of the embargo there is no requirement that the shipper specify the obvious, i.e., that it intends to ship the same commodity, volume and frequency that it has consistently shipped with the carrier's direct knowledge.

have taken for CSXT to make minor interim repairs to Bridge ONI 223.3 to enable restoration of rail service. Of overriding weight in the balancing process are that (1) those interim repairs would not have required substantial cost; and (2) CSXT was financially and physically able to carry out the repairs. Also strongly pointing to the unreasonableness of the embargo are (3) its extended length; (4) CSXT's acknowledgment that it made a calculated decision not to expend the funds for repair, even after its petition for exemption of abandonment was denied by the Board; and (5) that a lesser traffic volume than prior to the embargo would move over the bridge, with corresponding reduced stress on the bridge.

The cost of interim repairs to restore service was not substantial whether credence were to be given to the cost of \$4,719 identified by BBB's bridge expert or to the maximum cost of \$17,753 suggested by the content of a CSXT bridge inspection report. Both amounts are less than the \$18,002 cost of repair found to be affordable in *Louisiana Railcar, Inc. v. Missouri Pacific R. Co.*, *supra*, 5 I.C.C.2d at 546-547. Both amount are in the range of the \$10,000 cost of repair found to be modest and warranted in *Overbrook Farmers Union - Petition for Declar. Order*, *supra*, 5 I.C.C.2d at 324, and in the *GS* case, *supra*, 143 F.3d at 394. It would take only a single day to make the repairs identified by BBB, and only four days to make the maximum repairs suggested by the CSXT report.

Without question, CSXT was financially and physically able to make the repairs. CSXT is a Fortune 500 company in sound financial condition. The cost of interim repairs would have been minute compared to CSXT's net railway operating income of \$456,408,000 in 2001. Any number of the more than 100 employees in CSXT's Midwest Region whose duties include repair of railroad bridges would have been physically able to make the required interim repairs.

The 20-month length of the embargo and its current ongoing nature imply that by virtue of the embargo, CSXT intended to cease rail service indefinitely rather than to suspend rail service temporarily. That is confirmed explicitly by CSXT's acknowledgment in answer to the complaint that it made a calculated decision not to expend funds to repair Bridge ONI 223.3 to restore rail service, even after the Board denied its petition for exemption of abandonment of the subject rail line.^{13/}

Collectively, consideration of those criteria compels a finding that CSXT's embargo became unreasonable almost from the start, and consequently did not provide justification for CSXT's failure to provide rail transportation except for no more than four days after it was imposed.

C. The Circumstances Cited In CSXT's Answer Do Not Provide Justification For CSXT's Failure To Provide Rail Transportation

In Paragraph V on page 5 of its Answer filed August 8, 2002, CSXT cited the following circumstances as justification for its decision not to expend the funds necessary to repair Bridge ONI 223.3:

... CSXT had decided to prosecute abandonment of the Memphis-Cordova Line, was actively advancing the abandonment, was attempting to make arrangements for alternate service for Complainant, and concluded that it would not earn the necessary return on its investment to repair and/or replace the Bridge ...

Essentially the same circumstances were cited in Paragraph VI on page 7 of the Answer as justification for CSXT's decision not to repair the Bridge after the Board's denial of exemption for abandonment, except that prosecution and advancement of discontinuance of service on the line were substituted for prosecution and advancement of abandonment.

^{13/} The bridge would be used for less than half the traffic volume than before the embargo, reducing wear and tear.

None of the circumstances cited by CSXT provides the slightest justification for its failure to provide transportation at BBB's request.

(i) **deciding and preparing to abandon**

It is settled that a rail carrier cannot avoid liability for failure to provide rail transportation simply by seeking abandonment authorization. *Overbrook Farmers Union - Petition for Declar. Order, supra*, 5 I.C.C.2d at 322, citing *ICC v. Maine Central Railroad Company*, 505 F.2d 590, 595 (D. Vt., 1974). If actually seeking abandonment authorization does not avoid liability under 49 U.S.C. § 11101(a), it follows *a fortiori* that neither does CSXT's mere decision to prosecute an abandonment or discontinuance, nor "actively advancing" an abandonment or discontinuance prior to filing of a petition or application for authorization. In the *Caddo Antoine* decision, *supra*, the Board noted that the Court in the *GS* case held that the rail carrier should have repaired the track as soon as possible, even though the carrier made a determination shortly after instituting the embargo to abandon the track or otherwise dispose of it. (2000 STB LEXIS 252 at *6). It is apparent, therefore, that CSXT's decision to prosecute abandonment or discontinuance and its active advancement of abandonment or discontinuance do not provide justification for its failure to provide rail transportation on request.

(ii) **attempting to arrange for alternate service**

It is settled that a mere attempt to arrange for alternate transportation service does not justify failure to provide rail transportation on request. That principle was stated most clearly in *Louisiana Railcar, Inc. v. Missouri Pacific R. Co.*, *supra*, 5 I.C.C.2d at 547, viz.:^{14/}

MP argues that it had no intention to discontinue service to LRC because it proposed to sell the line to another carrier to provide continued service. We do not agree with MP that this effort to arrange for another carrier to provide for rail service fulfills its responsibilities under the Act to provide transportation in the meantime. While in *Overbrook*, *supra*, we noted that MP could have continued to meet its common carrier obligation by offering equivalent truck service, the mere search for a substitute rail operator offers no solace to LRC, nor does it meet MP's common carrier obligation.

As stated by the Court in the *GS* case, the rail carrier is to restore rail service first, and then consider long-term options such as sale of the line for continued rail operation. (143 F.3d at 394).

Bar Ale, Inc. v. California Northern R. Co., 2001 STB LEXIS 633 (STB Finance Docket No. 32821, dec. served July 20, 2001), is not to the contrary. The Board there took into account unexpectedly lengthy negotiations for sale of the involved line in finding that an unusually lengthy embargo did not imply an intent on the part of the rail carrier to cease service indefinitely (*id.* at *14-15). However, the Board did not find that the carrier's attempt to sell the line for continued rail operation justified its failure to provide rail service. Instead, the Board found that the rail carrier's failure to provide rail transportation was not unreasonable because (1) the cost of required repairs was substantial; (2) the rail carrier was

^{14/} The ICC's reference to "equivalent truck service" in the *Overbrook* case was to truck allowances that would have put the shipper in the same economic position as if direct rail service had been provided. (5 I.C.C.2d at 326). The ICC found that adequate truck allowances had not been offered (*id.*).

not financially able to pay that cost; (3) substituted service was provided so that the shipper was not left without a transportation option; and (4) the shipper intended to relocate off the rail line (*id.* at *14-16).

It is clear, therefore, that CSXT's attempts to make arrangements for alternative service for BBB do not provide justification for CSXT's failure to provide rail transportation on request.

(iii) inadequate rate of return on the cost of repair of the bridge

The Court in the *GS* case made it clear, if it was not clear already, that a rail carrier cannot lawfully refuse to provide requested rail transportation on the ground that it would be unprofitable to perform the transportation. (143 F.3d at 394). The Court explained that unprofitability of operations is a matter for consideration in abandonment or discontinuance proceedings, not in proceedings involving the reasonableness of embargoes. (*Id.*).

Numerous decisions are in accord. *See, e.g., Ethan Allen, Inc. v. Maine Central R. Co.*, *supra*, 431 F.Supp. at 743; *Montgomery Ward & Co. v. Northern Pac. Term. Co.*, *supra*; *New York Central R. Co. v. United States*, 201 F.Supp. 958, 959-960 (SD, NY, 1962); and *New Orleans T & T Bureau v. Mississippi Value Barge Line Co.*, 280 I.C.C. 105 (1951).

In attempting to justify its failure to restore rail service on the ground that it would not earn an adequate return on its investment to repair and/or replace the bridge, CSXT was referring to the cost of bridge repair for long-term operations, i.e., for at least 10 years. As the Court in the *GS* case made clear, the cost of long-term operations has no place in proceedings to determine the reasonableness of embargoes. In addition, inasmuch as unprofitability of operations is no defense to an action for violation of § 11101(a), it follows

a fortiori that neither can such an action be successfully defended on the ground that a rail carrier would not earn a desired rate of return from an investment necessary to restore rail service. For all of these reasons, CSXT's failure to provide requested rail transportation cannot be justified on the financial grounds put forth by CSXT.

D. CSXT Should Be Ordered To Cease And Desist From Violating 49 U.S.C. § 11101(a)

It having been shown that CSXT is in violation of 49 U.S.C. § 11101(a), the Board should enter an order requiring CSXT to cease and desist forthwith from such violation.

2. DAMAGES SHOULD BE AWARDED

A. Proximate Causality Was Shown

The damages claimed by BBB have been shown to have been proximately caused by CSXT's failure to provide requested rail transportation. It was not possible for BBB to conduct a reload operation without direct rail service at Bellwood Reload. In order to be in a position to provide a reload service, an entity must have direct rail service that is not available to its reload customers. CSXT's unlawful embargo deprived BBB of the required rail service at Bellwood Reload. Proximate causality is thus shown between CSXT's failure to provide requested rail transportation and loss of BBB's reload business and associated profits.

CSXT's unlawful embargo made it impossible for BBB to receive business for its own account directly by rail at Bellwood Reload. BBB has been forced to receive that traffic by rail-truck reloading service. That service has required BBB to pay added costs compared to its prior receipt of that traffic directly by rail. Proximate causality is thus shown between CSXT's failure to

provide requested rail transportation and BBB's payment of additional costs for receipt of business for its own account.

B. The Extent Of Damages To Date Was Shown

There has been an adequate showing of the extent of BBB's damages to date. The \$500 charge that BBB received for each carload reloaded was shown to be tantamount to BBB's lost profit. The gross amount received and the net profit were essentially the same because BBB's customers were paying primarily for the economy of receiving shipments at a nearby location by rail rather than for physical services rendered by BBB, and because except for minimal fuel costs for forklifts, there were no costs that were directly attributable to BBB's reload operation. Reload customers were willing to pay BBB's reload charge because their rail freight charges plus the reload charge were considerably less than the charges that they would have paid for truck transportation directly from origin. No costs were directly attributable to the reload operation because the personnel and equipment time and storage space used in the reload operation utilized available capacity in BBB's business for its own account.

It is necessary to estimate the quantity of reload business that BBB would have handled after the embargo because no reload business could actually be handled during that period due to the absence of rail service. The most reliable evidence on which to base such an estimate is the actual quantity of reload business handled by BBB immediately before loss of rail service. In the most recent calendar year before embargo of rail service, BBB received 198 carloads of forest products at Bellwood Reload, 180 of which consisted of reload business. In the proceeding on CSXT's application for authority to discontinue rail service on the line, CSXT projected future rail traffic on the line at the same 198 carloads per year. BBB agreed with that projection in the discontinuance

proceeding, and continues to agree with it here. On that basis, it should be found that BBB would have received 180 carloads per year of reload traffic but for imposition of the embargo, effective March 1, 2001. BBB thus would have received 255 carloads of reload traffic through September 30, 2002, as to which it has lost profits of \$500 per carload, or a total of \$127,500.

BBB is receiving traffic formerly received by rail at Bellwood Reload for its own account in rail-truck reload service via CSXT's Leewood Yard, CN's Memphis yard or a CN team track. While the rail freight charges to those reloading points are the same as BBB paid for rail delivery directly at Bellwood Reload, in addition BBB has been required to pay reloading charges on that traffic. Between the effective date of the embargo and September 30, 2002, BBB has received 27 carloads on which it has paid a total of \$13,500 in additional charges to L&D Transports, and 23 carloads on which it has paid a total of \$12,106 in additional charges to GST Corporation.

As of September 30, 2002, BBB's total damages are as follows:

Lost profits - reload business	\$ 127,500
Reload charges - L&D Transports	13,500
Reload charges - GST Corporation	<u>12,106</u>
TOTAL DAMAGES, 9-30-02	<u>\$ 153,106</u>

C. BBB Reasonably Mitigated Damages

The Board should find that BBB acted reasonably in regard to mitigation of damages. There was nothing that BBB could have done to mitigate the lost profits from loss of its reload business. It could not conduct its reload business from another location. Bellwood Reload is its only distribution facility. BBB does not have the truck capacity that is necessary to provide a reload

business successfully at a rail-served location that does not have indoor storage. Its profit would be wiped out if it were to hire truck transportation from such a location to dealer facilities.

BBB has not provided reload service for customers since the embargo. Shipments by rail to CSXT Leewood Yard consigned to former BBB customers "care of" BBB are being reloaded by L&D Transports, which also trucks the products to dealer facilities. BBB acts solely as a "notify" party in regard to those shipments. It does not derive reload revenue or revenue of any other kind in regard to those shipments.

BBB acted reasonably in receiving traffic for its own account in rail-truck transportation. That was the lowest-cost alternative to direct rail service. Direct truck service would have cost much more than rail-truck service.

D. The Board Should Provide For A Subsequent Phase Of This Proceeding For A Final Determination Of Damages Plus Interest

Inasmuch as CSXT is continuing to fail to provide requested rail transportation, damages will continue to be incurred during the pendency of this complaint. Consequently, it will be necessary at a future time to make a final determination of total damages and to calculate interest thereon. The Board is urged to provide for a subsequent phase of this proceeding for that purpose.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should find that from no more than four days after March 1, 2001, to date, and on a continuing basis, CSXT has failed to provide rail transportation to Bellwood Reload on reasonable request in violation of 49 U.S.C. § 11101(a). The Board should enter an order requiring CSXT to cease and desist forthwith from violating that statute. The Board should find that BBB has been damaged as a result of that statutory violation in

the form of lost profits from reload business no longer able to be handled, and by virtue of added costs on traffic transported for BBB's own account, but that a final determination of the amount of those damages plus interest cannot be made at this time because of the continuing nature of the statutory violation. The Board should provide for a subsequent phase of this proceeding in which that final determination is to be made.

Respectfully submitted,

BOLEN-BRUNSON-BELL LUMBER COMPANY, INC.
3175 Johnson Avenue
P.O. Box 11205
Memphis, TN 38111

Complainant

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Complainant

DATE FILED: October 28, 2002

VERIFIED STATEMENT OF HARVEY H. STONE

My name is Harvey H. Stone. I am President of Stone Consulting & Design, Inc. My business address is 324 Pennsylvania Avenue West, P.O. Box 306, Warren, PA 16365.

I am a licensed professional engineer in 31 states, including Tennessee. I established Stone Consulting & Design, Inc. in 1996 to provide consulting service in the rail industry. Prior to that time, I was employed by a regional engineering firm for 28 years. From 1980 to 1996, I was President of that company.

Attached to my statement as Appendix HHS-1 is a copy of my resume. I have 32 years of experience in inspection, design and repair of railroad bridges. My resume lists seven railroad companies for whom I have performed bridge inspections. Attached to this Statement as Appendix HHS-2 is a listing of six additional railroad companies for whom I have inspected, designed or repaired railroad bridges.

I have been retained by Bolen-Brunson-Bell Lumber Company, Inc. (BBB) to provide an estimate of the cost required to make interim repairs to a railroad bridge on a rail line owned by CSX Transportation, Inc. (CSXT) in order to restore rail service on that embargoed line, and to estimate the length of time that would be required to make those repairs.

The railroad bridge in question is located at Milepost 223.3 on CSXT's Cordova rail line at Memphis, Tennessee. That bridge is known as Bridge ONI 223.3. It is a 6-pile timber trestle with 10 bents. It is 120 feet in length. I performed a detailed inspection of Bridge ONI 223.3 on August 11, 2002 in conjunction with a verified statement that I submitted in behalf of BBB in

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STB Docket No. AB-55 (Sub-No. 618), in which CSXT seeks authority to discontinue rail service over the line that serves BBB's place of business.

CSXT has not identified particular unsafe conditions in Bridge ONI 223.3 that caused it to embargo rail service to BBB's place of business. The evidence submitted by CSXT in the discontinuance proceeding was contradictory in that respect. Attached to my statement as Appendix HHS-3 is a copy of a report of an inspection of Bridge ONI 223.3 performed by a CSXT bridge inspector on January 9, 2001. That report appeared as pages 58 and 59 in Volume 3 of CSXT's application in the discontinuance proceeding. The entries under the heading "class" in the report correspond to bridge inspection codes in CSXT's bridge inspection manual. In a response to discovery in this proceeding, CSXT provided explanations for its code entries as follows:

Bridge Inspection Codes

- A Bridge component in good condition - no maintenance required
- B Preventative maintenance for non-structural item. This code used for miscellaneous items such as drift and channel conditions, paint, track alignment and profile.
- C Bridge structural component
 - C1 - Structure member in poor condition and requires to be monitored at each inspection. Structural members noted with this coding should be considered for maintenance program.
 - C3 - Structural member is functional with signs of deterioration. No maintenance is expected between inspection intervals.
 - C5 - Structural member is in satisfactory condition with only minor deterioration noted.

- D Bridge feature or member requires slow order, immediate repair, or taken out of service for safety consideration. It is expected that the Inspector or Bridge Supervisor finding such a condition will implement the appropriate action (including proper notification of the Train Dispatcher and the Bridge Design Office or local Road Authority) immediately.

It is apparent that the only code classification that would warrant immediate repair or taking a line out of service for safety consideration is code D. It is also apparent from the January 9, 2001 inspection report that CSXT's bridge inspector did not classify any component of Bridge ONI 223.3 as a code D. In this bridge inspection report issued less than two months before CSXT embargoed service on the line in question, CSXT's own bridge inspector did not identify any condition in the bridge that warranted taking the line out of service for safety reasons.

Attached to my statement as Appendix HHS-4 are copies of reports of inspections of Bent Nos. 3 and 4 of Bridge ONI 223.3 performed by a CSXT bridge inspector on June 19, 2002, on which the entry "critical" appears. In response to discovery in this proceeding, CSXT has stated that the entry "critical" in those reports "means a defective condition requiring immediate repair or removal from service for safe operation of rail traffic". There was no entry of "critical" or any entry of similar import on the bridge inspection reports for any other bents in the Bridge.

It is not possible to reconcile CSXT's claim that in June, 2002 conditions in two bents in the bridge warranted an embargo with the January, 2001 CSXT report that no conditions in the bridge warranted an embargo. It cannot be that bridge conditions deteriorated in the interim. No traffic moved over the bridge during almost all of the period in question. The line was embargoed effective March 1, 2001.

Even giving credence to CSXT's later claim, it does not follow that every defect noted by CSXT would require repair for safe restoration of rail service. Reference to Appendix HHS-4 shows that CSXT classified as "reject" five of the six pilings and the cap in Bent No. 3 and four of the six pilings and the cap in Bent No. 4. CSXT did not state whether it claims that all of those pilings and caps require repair for safe restoration of rail service, or whether service could be safely restored if a lesser number of those bridge components were to be repaired. It can be concluded, however, that repair of nine pilings and two caps is the maximum repair that could be claimed by CSXT to be required for safe restoration of rail service.

As a result of my own inspection of Bridge ONI 223.3, I testified in the discontinuance proceeding that four pilings should be posted and the cap should be replaced in Bent No. 3, and three pilings should be posted in Bent No. 4, but the cap in that Bent does not require replacement. However, that testimony identified repairs that would be required for long-term operations, i.e., at least ten years into the future. Lesser repairs would be required to safely allow for short-term operations. Certainly, replacement of the caps in those bents is not required for that purpose. Neither of those caps has failed. There is no evidence of crushing of either cap that would indicate significant overstress. Not all of the pilings would require posting for safe short-term operation. Certainly, operations could be performed safely if four of the six pilings in each bent were to be in satisfactory condition. That is evident from the fact that there are many railroad bridges that have only a total of four pilings per bent. Four good pilings per bent would permit safe operation over Bridge ONI 223.3 in view of the light traffic volume of less than 200

carloads per year. It would require posting of only two pilings in Bent No. 3 and one piling in Bent No. 4 to result in four satisfactory pilings in each bent.

It can be concluded, therefore, that safe rail operations can be restored over the line if minor interim repairs were to be made to Bent Nos. 3 and 4 of Bridge ONI 223.3, consisting of posting three pilings.

Attached to my Statement as Appendix HHS-5 is a copy of a quotation of costs for bridge repair made by Currie Construction Company, Inc. to Meridian Southern Railway on January 26, 2001. Stone Consulting & Design, Inc. obtained that quotation for Meridian Southern after completing inspection of 84 timber bridges on the Meridian Southern in November, 2000. The costs provided by Currie Construction include all materials, hardware, equipment and installation. Meridian Southern contracted with Currie Construction to make most of the repairs quoted by Currie. In determining unit costs to be used in my cost estimate in this case, I used the highest unit cost per item quoted by Currie, as adjusted to apply to Memphis, TN on the basis of city cost indices in RS Means Building Construction Cost Data. The pertinent pages of the Means Data appear as Appendix HHS-6 attached to my Statement. My adjustment of the unit costs based on the Means Data appears as my Appendix HHS-7. The applicable unit costs (rounded) are \$1,573 per piling for posting pilings and \$1,798 per cap for replacing caps.

On the foregoing bases, rail service to BBB's place of business could have been safely restored if three pilings in Bent Nos. 3 and 4 of Bridge ONI 223.3 were posted at a total cost of \$4,719 (\$1,573 each x 3). Even making the maximum repairs that could be claimed as necessary

*APPENDIX 1 - Opening Statement
Finance Docket No. 34236
VS - Harvey H. Stone
Page 5*

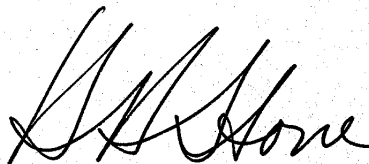
by CSXT, service could have been safely restored at a total cost of \$17,753 (9 pilings at \$1,573 each + 2 caps at \$1,798 each).

In response to my inquiry, a representative of Currie Construction Company stated that it would have taken no more than one day to post the three pilings that I identified as requiring repair, and no more than four days to perform the maximum repairs that could be claimed as necessary by CSXT. That is an informed estimate entitled to considerable weight. Currie Construction actually performed repairs of the nature here involved for Meridian Southern Railway in 2001, and regularly performs repairs of that nature in the ordinary course of its business.

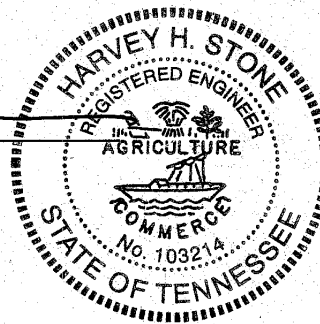
VERIFICATION

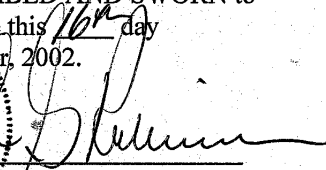
STATE OF PENNSYLVANIA)
) SS:
COUNTY OF WARREN)

HARVEY H. STONE, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.



HARVEY H. STONE



SUBSCRIBED AND SWORN to
Before me this 16th day
of October, 2002.


Notary Public

My Commission Expires:

Notarial Seal
Linda G. Robinson, Notary Public
Warren, Warren County
My Commission Expires Apr. 7, 2003
Member, Pennsylvania Association of Notaries



Harvey H. Stone, P.E., President

Education: Rensselaer Polytechnic Institute/BSCE

Harvey Stone established Stone Consulting & Design, Inc. to provide a consulting service to the rail industry. Prior to forming SC & D, Mr. Stone was with a regional engineering firm for 28 years, president from 1980 to his leaving in 1996. He has also been employed by the U.S. Army Corps of Engineers and in the construction sector. Mr. Stone is chief engineer of the firm as well as chief executive officer and acts as principal-in-charge on major industrial and rail projects.

During Mr. Stone's many years of experience, he has successfully handled large projects involving railroad and rail passenger feasibility studies, railroad track and structure design, economic studies and feasibility reports along with numerous civil works projects in more than fourteen states. He is frequently called upon to prepare preliminary engineering feasibility studies for industrial development projects and rail projects involving federal and state grants. Most of the projects he has recommended as feasible have been funded and constructed.

Mr. Stone is involved with the Society of Professional Engineers, American Consulting Engineers Council (ACEC), American Railway Engineering and Maintenance-of-Way Association (AREMA) and the American Society of Highway Engineers through which he has obtained invaluable exposure to the many changes in engineering technology over the years as well as continued awareness of the constantly changing rules, regulations and grant programs on all governmental levels. He is past chairman of ACEC's Quality Committee on which he has served over five years.

Mr. Stone is a registered Professional Engineer in over 30 states.

Representative projects:

Bridge Inspections

Meridian Southern Railway, Mississippi
Owego & Harford Railroad, New York
Western New York & Pennsylvania Railroad, New York & Pennsylvania
New York & Ogdensburg Railroad, New York
Southwest Pennsylvania Railroad, Pennsylvania
Allegheny Valley Railroad, Pennsylvania
Arcade & Attica Railroad, New York

Duferco Farrell Corp., formerly Caparo Steel, Farrell, Pennsylvania

Rehabilitation of the 46 miles of in-plant track facilities for the former Sharon Steel Manufacturing Complex. Three phases complete to date, totaling over \$750,000.



Stone Consulting & Design, Inc.

Grand Valley Manufacturing, Warren, Pennsylvania

Rehabilitation of manufacturing facility (former Struthers Wells facility) with 120-ton crane and rail access. Project included floors, foundation, heating, electric and building improvements. Project cost - \$420,000.

Winner Steel Services, Sharon, Pennsylvania

Design and management of construction of 1400' embedded track siding through an area of contaminated ground. Provided consulting for coil unloading facility and overhead crane foundation design. Project cost - \$370,000.

Uniflo Building Improvements, Erie, Pennsylvania

Rehabilitation of 150,000 SF building constructed in 1890, including floors and loading/unloading facilities. Project cost - \$1,250,000.

Westmoreland County IDC, Greensburg, Pennsylvania

Design and administration of numerous projects for this client including several large track rehabilitation projects, rail access with crossings, and grade crossing warning systems. Total project costs to date - \$1.7 million.

Portage County Passenger Rail Study, Ravenna, Ohio

A passenger rail study to evaluate alternative passenger routings and potential ridership for a passenger connection, which could include Kent, Akron, Aurora and Cleveland, Ohio.

Western Nevada Development District, Carson City, Nevada

Feasibility study to determine the viability of reopening the historic Virginia and Truckee railroad as a regional passenger tourist attraction.

Kenosha Harborfront Trolley, Kenosha, Wisconsin

Design of a \$2,800,000 trolley system for downtown trolley loop to run from the harborfront to the railroad station.

Rail America, Inc. Lubbock, Texas

Rail line feasibility study, cost study and negotiations for the relocation of 12 miles of railroad track. Estimated project cost is \$16,000,000.

City of Warren, Warren, Pennsylvania

Design of a 425' five-span bridge across Conewango Creek, including intersections and traffic signals.

Pikes Peak Historical Street Railway, Colorado

Design of street track for historic trolley in new bridges and street connections.

Growth Resources of Wellsboro, Wellsboro, Pennsylvania

Railroad rehabilitation project, including drainage improvements, track welding, roadbed improvements, grade crossing replacements and new track construction. Project construction value close to \$1,000,000; total project value was \$2,200,000.

TMPA Rate Case, Slover & Loftus, Attorneys, Washington, DC

Preparation of engineering testimony on behalf of the Texas Municipal Power Authority against BNSF Railroad to establish lower coal shipping rates.



APPENDIX HHS-2

*Additional bridge inspections, design and rehabilitation
projects by Harvey H. Stone*

South Branch Valley Railroad, West Virginia

West Virginia Central Railroad, West Virginia

Knox & Kane Railroad, Pennsylvania

Lake Shore Railway Association, Ohio

Mohawk, Adirondack & Northern Railroad, New York

Northwest Pennsylvania Rail Authority, Pennsylvania

TIMBER BRIDGE INSPECTION REPORT

EXHIBIT B

REF ID: A11111 MILEPOST: 223.34 BRIDGE NUMBER: 223.3
 LOCATION: DISTRICT: DIVISION: NS SUBDIVISION: MEMPHIS TERMINAL
 COUNTY: SHELBY TOWN: WALTON ST: TN
 SPANS: 1 THRU 10 OF 10 SPAN TYPES: TS LENGTH: 120.00 DF: 120
 NO. TRACKS: 1 CROSSING: CYPRESS CREEK ROAD NAME:
 DATE INSPECTED: 01/09/01 INSPECTOR: H. L. SMITH HOW INSPECTED: VI

ITEM INSPECTED	NO	CLASS	REMARKS
--- GENERAL ---			
WHEEL CONDITION	1	B	
LOPES	2	B	BALLAST FALLING AWAY AT ENDS
GENERAL CLEAN	3	B	
CI, SPRINT, LIGHTNET, ETC.	4	NA	FIRE CHARRED TIMBERS-OCT. 1994
--- TRACK ---			
UR (Y/N)	N	5	NOTE: BRIDGE INSPECTED ACCOUNT FIRE 5-19-98
APPROACH - SURF/ALIGN	6	B	OLD TRACK, JT. RAIL
RIDGE - SURF/ALIGN	7	B	
RACK - RAIL ANCHORS	8	B	
RIDGE - RAIL ANCHORS	9	B	
DLTS - X EFFECT	10	B	
LIPS - X EFFECT	11	NA	
DOCKS - X EFFECT	12	NA	
IES-COND & YR INSTALLED	13	NA	
IE PADS	14	NA	
UTER GUARD RAIL	15	NA	
INNER GUARD RAIL	16	NA	
AIL	112	17	NA
--- PIERS, ABUTMENTS ---			
DURATION	18	C1	NUMEROUS REJECTS DUE TO INTERNAL DECAY AND FIRE
ABUTMENTS	19	C1	DAMAGES
PIERS	20	NA	
RIDGE SEATS	21	C1	CAPS BURNED
ACK WALLS	22	C1	TIMBER DECAY
ING WALLS	23	NA	NEED SOME RIP-RAP
UD STILLS/BLOCKS	24	NA	
--- BENTS, PILES ---			
RAMPED/DRIVEN	25		
POSTS OR PILE/BENT	26		
CLIMBS/POSTS	27	NA	
PILES	28	C1	PILES CHARRED SEE NOTE ABOVE - NUMEROUS REJECTS
ENTRANCE	29	C1	(28) DUE TO HEAVY DECAY AND FIRE DAMAGES
TOP CAPS	30	NA	(29) HEAVY DECAY AND ALSO SOME FIRE DAMAGE
ISH/GIRTS	31	C1	(29) MOST NEED TO BE REPLACED
TRANSVERSE BRACING	32	C1	CHARRED SOME DECAY
DIAGONAL BRACING	33	NA	

IP BLOCKS/STEEL SPANS	34	C3	_____
ULTS/DOVELS/LAG SCREWS	35	HA	_____
MOSE/DATE	36		_____
MENT UNDER LOAD	37	HA	_____

--- DECK -----

TIMBERS/NO	11	38	C3	BURNT AND VARIOUS DECAYED AREAS. FIRE HAS HOW
IBELS/HEIGHT		39	HA	(38) ALLOWED QUICK WATER ABSORPTION INTO TIMBER
EAVATION BLOCK/HT		40	HA	(38) DECAY PROCESS WILL INCREASE.
LLAST DECK	TH	41	C1	DECAY AT ENDS
LLAST CURBS		42	C1	BAD-REPLACE WHEN WORKING IN AREA
LLAST DEPTH	13	43	B	SKIMPY AT SPANS 4,5,AND 6
WAYS (L/R/D/C)		44	HA	_____
YDRAILS (L/R/D)		45	HA	_____
IFUGE DAYS/NO		46	HA	_____

JUN 28 '02 10:23 FR CSXT LAW DEPT
JUN 21 2002 10:22 FK

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TO 83221248

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P.06/13

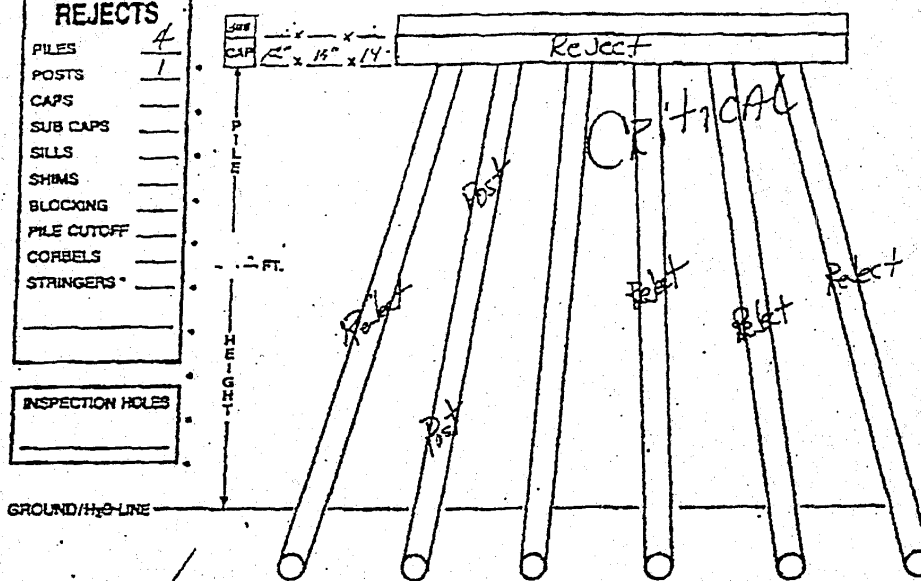
140.010

TIMBER BRIDGE INSPECTION AND TREATING REPORT

Owner CSX TRANSPORTATION Date Inspected 6-19-02
Bridge No. 001 223.3 Bents No. 4 Foreman J.S. Hood

MEMBERS CLASSIFIED	
REJECTS	
PILES	<u>4</u>
POSTS	<u>1</u>
CAPS	
SUB CAPS	
SILLS	
SHIMS	
BLOCKING	
PILE CUTOFF	
CORBELS	
STRINGERS	

INSPECTION HOLES



File No. Facing N <u>S</u> E W						
Average Diameter						
Condition Above Ground						
Groundline Work						
Dia. Sound Wood Below Groundline						
Approx. Length to Post						

REMARKS:

SYMBOLS	OPTIONAL ITEMS		EXCAVATION	
	INT.	EXT.	INT.	EXT.
PILES G/L	TR.		EXC. G/L	EA.
PILES	TR.		EXC. BRACE/CLT	EA.
POSTS	TR.		EXC. CUT OFFS	EA.
CAPS	TR.		EXC. DUMP BENT	EA.
SUB CAPS	TR.		EXC. SILLS	EA.
SHIMS	TR.			
SILLS	TR.		H ₂ O PROTECT	EA.
BLOCKING	TR.		OPTIONAL ITEMS	INT; EXT.
CORBELS	TR.			
STRINGERS	TR.			

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Barrie Construction Company, Inc.

Meridian South

P.O. Box 519
Raleigh, NC 27613

Phone (501) 732-7803
Fax (501) 732-7802

January 26, 2001

Steve May
Meridian Southern Railway
25 Delphine street
Owego, NY 13327

Via Fax # (507) 637-6317

The following are our quotes for described repairs.

Bridge MP 129.07 - Bridge Repair Total \$28,500.00
1) 520 LF of Longitudinal Bracing - \$9,000.00 17³⁰/LF
2) Reset all Canted Bridge Caps - \$10,500.00
3) Change 6 Caps - \$9,000.00 1500/CAP

Bridge MP 113.51 - Bridge Repair Total \$12,500.00
1) Change out 5 Piling - \$4,850.00 970/PILE

Bridge MP 113.111 - Bridge Repair Total \$19,390.00
1) Change 1 Cap - \$1,500.00 1500/CAP
2) Change 21 Stringers - \$17,890.00 851³⁰/STRINGER

Bridge MP 103.25 - Bridge Repair Total \$10,272.00
1) Change 3 caps - \$4,815.00 1605/CAP
2) Change 5 Piling - \$3,745.00 749/PILE
3) Change 2 Stringers - \$1,712.00 856/STRINGER

Bridge MP 107.67 - Bridge Repair Total \$15,408.00
1) Change 16 Piling - \$15,408.00 963/PILE

Bridge MP 107.53 - Bridge Repair Total \$17,120.00
1) Change 16 Piling - \$17,120.00 1070/PILE

Bridge MP 107.97

Option #1 - Total Repair

\$25,300.00

Build head wall at base of wash, back fill with dirt from right of way, rip rap headwall - \$25,300.00

Option #2 - Total Repair

\$39,500.00

Back fill wash with dirt from right of way, rip rap slope to river bank - \$39,500.00

Bridge MP 96.27 - Total Bridge Repair

\$10,120.00

- 1) Change out 2 Piling - \$1,500.00 750 / PILE
Shim 2 Piling - \$1,020.00
2) Change out 1 Cap - \$1,500.00 1600 / CAP
3) Change 7 Stringers - \$5,000.00 857¹⁴ / STRINGER

Bridge MP 95.94 - Total Bridge Repair

\$78,590.00

1) Estimate to place 2 lines 40' long of joined (20' joints) 78" concrete steel reinforced pipe, back fill with dirt, tear out bridge while working in time windows, furnish all ballast and rip rap as needed. We will also furnish 75 new cross ties. Lump Sum - \$78,590.00

Bridge MP 94.99 - Total Bridge Repair

\$13,450.00

- 1) Change 12 Piling - \$15,850.00 1404.17 / PILE
2) Change 1 Cap - \$1,600.00 1600 / CAP

Bridge MP 91.02 - Total Bridge Repair

\$15,475.00

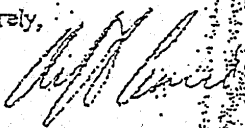
- 1) Change 3 Piling - \$3,200.00 1066.67 / PILE
2) Change 12 Stringers - \$10,275.00 856²⁵ / STRINGER

These prices include all labor, material, and taxes. Material will be new or #1 relay material. All piling replaced will be pinned with drift bolts to stump and banded with metal bands and cemented. If desired not to use bands and cement, our price will be reduced \$150.00 per piling.

After completion of each project, we would expect payment within 30 days.

Thank you for giving us the opportunity to bid on these projects. If you have any questions please give me a call.

Sincerely,



Cliff Currie, President
CURRIE CONSTRUCTION COMPANY, INC.

CC/mc

Highest Cost

PILES \$1404¹⁷
CAPS \$1605
STRINGER \$857¹⁴
BRACING \$1730 / LF

RSMeans



Building Construction Cost Data

60th Annual Edition

2002



Cost Indexes

DIVISION	SOUTH DAKOTA																							
	MIDWEST						NORTHWEST						PACIFIC						SOUTHWEST					
	372						376						375						377					
	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL
01500 EQUIPMENT RENTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
02 SITE CONSTRUCTION	80.0	45.0	125.0	70.0	35.0	105.0	90.0	40.0	130.0	85.0	35.0	120.0	75.0	40.0	115.0	65.0	35.0	100.0	55.0	30.0	85.0	45.0	20.0	65.0
02100 CONCRETE FORMS & ACCESSORIES	84.0	42.0	126.0	72.0	36.0	108.0	78.0	38.0	116.0	82.0	37.0	119.0	76.0	39.0	115.0	70.0	40.0	110.0	60.0	35.0	95.0	40.0	15.0	55.0
02200 CONCRETE REINFORCEMENT	105.0	54.0	159.0	102.0	52.0	154.0	98.0	50.0	148.0	95.0	48.0	143.0	90.0	46.0	136.0	85.0	44.0	129.0	80.0	42.0	122.0	75.0	40.0	115.0
02300 CAST-IN-PLACE CONCRETE	85.0	43.0	128.0	73.0	37.0	110.0	79.0	39.0	118.0	74.0	40.0	114.0	68.0	41.0	109.0	63.0	42.0	105.0	58.0	43.0	101.0	53.0	18.0	51.0
03 CONCRETE	85.0	43.0	128.0	73.0	37.0	110.0	79.0	39.0	118.0	74.0	40.0	114.0	68.0	41.0	109.0	63.0	42.0	105.0	58.0	43.0	101.0	53.0	18.0	51.0
04 MASONRY	85.0	43.0	128.0	73.0	37.0	110.0	79.0	39.0	118.0	74.0	40.0	114.0	68.0	41.0	109.0	63.0	42.0	105.0	58.0	43.0	101.0	53.0	18.0	51.0
05 METALS	105.0	54.0	159.0	102.0	52.0	154.0	98.0	50.0	148.0	95.0	48.0	143.0	90.0	46.0	136.0	85.0	44.0	129.0	80.0	42.0	122.0	75.0	40.0	115.0
06 WOOD & PLASTICS	85.0	43.0	128.0	73.0	37.0	110.0	79.0	39.0	118.0	74.0	40.0	114.0	68.0	41.0	109.0	63.0	42.0	105.0	58.0	43.0	101.0	53.0	18.0	51.0
07 THERMAL & MOISTURE PROTECTION	85.0	43.0	128.0	73.0	37.0	110.0	79.0	39.0	118.0	74.0	40.0	114.0	68.0	41.0	109.0	63.0	42.0	105.0	58.0	43.0	101.0	53.0	18.0	51.0
08 DOORS & WINDOWS	85.0	43.0	128.0	73.0	37.0	110.0	79.0	39.0	118.0	74.0	40.0	114.0	68.0	41.0	109.0	63.0	42.0	105.0	58.0	43.0	101.0	53.0	18.0	51.0
09000 PLASTER & GYPSUM BOARD	104.0	53.0	157.0	100.0	50.0	150.0	96.0	48.0	144.0	92.0	46.0	138.0	88.0	44.0	132.0	84.0	42.0	126.0	80.0	40.0	120.0	76.0	38.0	114.0
09100 CEILING & ACOUSTICAL TREATMENT	102.0	52.0	154.0	98.0	48.0	146.0	94.0	46.0	140.0	90.0	44.0	134.0	86.0	42.0	128.0	82.0	40.0	122.0	78.0	38.0	116.0	74.0	36.0	110.0
09200 FLOORING	110.0	56.0	166.0	105.0	54.0	159.0	100.0	52.0	152.0	95.0	50.0	145.0	90.0	48.0	138.0	85.0	46.0	131.0	80.0	44.0	124.0	75.0	40.0	119.0
09700 WALL FINISHES, PAINTS & COATINGS	105.0	54.0	159.0	102.0	52.0	154.0	98.0	50.0	148.0	95.0	48.0	143.0	90.0	46.0	136.0	85.0	44.0	129.0	80.0	42.0	122.0	75.0	40.0	115.0
09 FINISHES	105.0	54.0	159.0	102.0	52.0	154.0	98.0	50.0	148.0	95.0	48.0	143.0	90.0	46.0	136.0	85.0	44.0	129.0	80.0	42.0	122.0	75.0	40.0	115.0
10-14 TOTAL DIV. 10000 - 14000	100.0	50.0	150.0	95.0	47.5	142.5	90.0	45.0	135.0	85.0	42.5	127.5	80.0	40.0	120.0	75.0	37.5	112.5	70.0	35.0	105.0	65.0	32.5	97.5
15 MECHANICAL	95.0	47.5	142.5	90.0	45.0	135.0	85.0	42.5	127.5	80.0	40.0	120.0	75.0	37.5	112.5	70.0	35.0	105.0	65.0	32.5	97.5	65.0	32.5	97.5
16 ELECTRICAL	100.0	50.0	150.0	95.0	47.5	142.5	90.0	45.0	135.0	85.0	42.5	127.5	80.0	40.0	120.0	75.0	37.5	112.5	70.0	35.0	105.0	65.0	32.5	97.5
01-18 WEIGHTED AVERAGE	92.0	46.0	138.0	87.0	43.0	130.0	82.0	40.0	122.0	77.0	37.0	114.0	72.0	34.0	106.0	67.0	31.0	98.0	62.0	28.0	90.0	57.0	25.0	82.0

DIVISION	TENNESSEE																							
	CHATTANOOGA						COLUMBIA						COCKEYVILLE						JACKSON					
	373-374						384						385						386					
	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL
01500 EQUIPMENT RENTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
02 SITE CONSTRUCTION	104.0	52.0	156.0	98.0	49.0	147.0	92.0	47.0	139.0	86.0	44.0	130.0	80.0	41.0	121.0	74.0	38.0	112.0	68.0	35.0	103.0	62.0	30.0	92.0
02100 CONCRETE FORMS & ACCESSORIES	85.0	42.0	127.0	78.0	39.0	117.0	72.0	36.0	108.0	66.0	33.0	99.0	60.0	30.0	90.0	54.0	27.0	81.0	48.0	24.0	72.0	42.0	18.0	50.0
02200 CONCRETE REINFORCEMENT	94.0	49.0	143.0	88.0	46.0	134.0	82.0	43.0	125.0	76.0	40.0	116.0	70.0	37.0	107.0	64.0	34.0	98.0	58.0	31.0	89.0	52.0	19.0	57.0
02300 CAST-IN-PLACE CONCRETE	105.0	54.0	159.0	99.0	51.0	150.0	93.0	48.0	141.0	87.0	45.0	132.0	81.0	42.0	123.0	75.0	39.0	114.0	69.0	36.0	105.0	63.0	31.0	94.0
03 CONCRETE	94.0	49.0	143.0	88.0	46.0	134.0	82.0	43.0	125.0	76.0	40.0	116.0	70.0	37.0	107.0	64.0	34.0	98.0	58.0	31.0	89.0	52.0	19.0	57.0
04 MASONRY	94.0	49.0	143.0	88.0	46.0	134.0	82.0	43.0	125.0	76.0	40.0	116.0	70.0	37.0	107.0	64.0	34.0	98.0	58.0	31.0	89.0	52.0	19.0	57.0
05 METALS	94.0	49.0	143.0	88.0	46.0	134.0	82.0	43.0	125.0	76.0	40.0	116.0	70.0	37.0	107.0	64.0	34.0	98.0	58.0	31.0	89.0	52.0	19.0	57.0
06 WOOD & PLASTICS	94.0	49.0	143.0	88.0	46.0	134.0	82.0	43.0	125.0	76.0	40.0	116.0	70.0	37.0	107.0	64.0	34.0	98.0	58.0	31.0	89.0	52.0	19.0	57.0
07 THERMAL & MOISTURE PROTECTION	102.0	54.0	156.0	96.0	48.0	144.0	90.0	45.0	135.0	84.0	42.0	126.0	78.0	39.0	117.0	72.0	36.0	108.0	66.0	33.0	99.0	54.0	20.0	59.0
08 DOORS & WINDOWS	99.0	51.0	150.0	93.0	47.0	140.0	87.0	44.0	131.0	81.0	41.0	122.0	75.0	38.0	113.0	69.0	35.0	104.0	63.0	32.0	95.0	53.0	21.0	64.0
09000 PLASTER & GYPSUM BOARD	94.0	49.0	143.0	88.0	46.0	134.0	82.0	43.0	125.0	76.0	40.0	116.0	70.0	37.0	107.0	64.0	34.0	98.0	58.0	31.0	89.0	52.0	19.0	57.0
09100 CEILING & ACOUSTICAL TREATMENT	94.0	49.0	143.0	88.0	46.0	134.0	82.0	43.0	125.0	76.0	40.0	116.0	70.0	37.0	107.0	64.0	34.0	98.0	58.0	31.0	89.0	52.0	19.0	57.0
09200 FLOORING	94.0	49.0	143.0	88.0	46.0	134.0	82.0	43.0	125.0	76.0	40.0	116.0	70.0	37.0	107.0	64.0	34.0	98.0	58.0	31.0	89.0	52.0	19.0	57.0
09700 WALL FINISHES, PAINTS & COATINGS	105.0	54.0	159.0	99.0	51.0	150.0	93.0	48.0	141.0	87.0	45.0	132.0	81.0	42.0	123.0	75.0	39.0	114.0	69.0	36.0	105.0	63.0	31.0	94.0
09 FINISHES	94.0	49.0	143.0	88.0	46.0	134.0	82.0	43.0	125.0	76.0	40.0	116.0	70.0	37.0	107.0	64.0	34.0	98.0	58.0	31.0	89.0	52.0	19.0	57.0
10-14 TOTAL DIV. 10000 - 14000	100.0	50.0	150.0	95.0	47.5	142.5	90.0	45.0	135.0	85.0	42.5	127.5	80.0	40.0	120.0	75.0	37.5	112.5	70.0	35.0	105.0	65.0	32.5	97.5
15 MECHANICAL	102.0	54.0	156.0	96.0	48.0	144.0	90.0	45.0	135.0	84.0	42.0	126.0	78.0	39.0	117.0	72.0	36.0	108.0	66.0	33.0	99.0	54.0	20.0	59.0
16 ELECTRICAL	105.0	54.0	159.0	99.0	51.0	150.0	93.0	48.0	141.0	87.0	45.0	132.0	81.0	42.0	123.0	75.0	39.0	114.0	69.0	36.0	105.0	63.0	31.0	94.0
01-18 WEIGHTED AVERAGE	92.0	46.0	138.0	87.0	43.0	130.0	82.0	40.0	122.0	77.0	37.0	114.0	72.0	34.0	106.0	67.0	31.0	98.0	62.0	28.0	90.0	57.0	25.0	82.0

DIVISION	TEXAS																							
	MCKENZIE						MEMPHIS						NASHVILLE						ABILENE					
	382						378-381						370-372						795-796					
	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL	MAT.	INST.	TOTAL

VS - Harvey H. Stone
Finance Docket No. 34236
APPENDIX HHS-6
(Page 3 of 3)



STONE CONSULTING & DESIGN, INC.
COMPUTATION SHEET

Subject COST ADJUSTMENT
MERIDIAN MS. to MEMPHIS TN
FOR BBA LUMBER

Page 1 of
By H. Stone
Date 8/14/02
Checked By
Date

MEANS HEAVY CONSTRUCTION - JAN. 2002

MERIDIAN, MISSISSIPPI 75.4

MEMPHIS, TENNESSEE 84.4

$$\frac{84.4}{75.4} = 1.12 = \text{FACTOR COST ADJUSTMENT}$$

	MERIDIAN	MEMPHIS
PILES	\$1464.17	\$1572.67
CAPS	\$1605.00	\$1797.60
STRINGERS	857.14	\$960.00
BRAACING	17.30	\$19.38

CORRING - USE CSXT COST /LF

$$\frac{\$1875}{240} = \$20.32 /LF$$

(VERIFIED STATEMENT OF LEROY DAVIDSON)

EXHIBIT G- AB-55 (SUB-NO. 590X)
PETITION FOR EXEMPTION FILED AUG. 24, 2001

Jacksonville, FL August 22, 2001

Ms. N. Rosenberg - J150

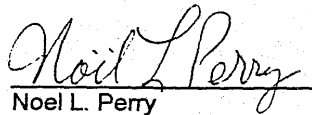
RE: TN-12 - CSXT Proposed Abandonment, Midwest Region, Nashville Division,
Memphis Terminal, from Milepost ONI-210.66 near Cordova to Milepost ONI-224.00,
near Memphis in Shelby County, Tennessee, a distance of 13.34 miles.
STB Docket No. AB-55 (Sub-No. 590X)

In preparation for filing a Petition for Exemption on the above-referenced line segment, listed below are the carloads handled over the line for the years 1999, 2000, and 2001 year-to-date:

<u>PATRON</u>	<u>STATION</u>	<u>COMMODITY</u>	<u>CARLOADS</u>		
			1999	2000	2001 (ytd)
Bolen Brunson Bell Mr. Bob Bell Bellwood Reload 3175 Johnson Avenue Memphis, TN 38112	Memphis	Lumber	134	198	33
Edmonds Material Mr. Jerry Edmonds Edmonds Material, Inc. 9400 Macon Road Cordova, TN 38018	Cordova	Brick	414	235	10
Memphis Gas Light & Water Mr. Tommy Shropshire Traffic Manager Tennessee Valley Authority 1101 Market Street Chattanooga, TN 37402	Cordova	Transformers	0	1	0
Whittington Lumber Mr. Jimmy Whittington Jimmy Whittington Lumber Co. 9045 Macon Road Cordova, TN 38018	Cordova	Lumber	41	38	1
			589	482	44

An embargo was placed on the rail line that serves the above four customers in March, 2001, citing unsafe bridge conditions. Non-rail transportation options available to the customers include motor carriers that serve the area. In addition, rail loading and unloading facilities are available at CSXT's Leewood Yard in Memphis.

There are no defense installations served by this line or in the immediate vicinity.


Noel L. Perry
Director
CSXT Sales & Marketing

2001 CSXT

210. RESULTS OF OPERATIONS - Continued
(Dollars in Thousands)

Line No.		Amount for current year (b)	Amount for preceding year (c)
38	(a) Fixed interest not in default	90,908	109,426
39	(b) Interest in default	0	0
40	Interest on unfunded debt	6,374	7,928
41	Amortization of discount on funded debt	272	273
42	TOTAL FIXED CHARGES (lines 38 through 41)	97,554	117,627
43	Income after fixed charges (line 37 minus line 42)	324,348	170,326
44	(c) Contingent interest	186	191
45	Unusual or infrequent items (debit) credit	0	0
46	Income (Loss) from continuing operations (before inc. taxes)	324,162	170,135
47	(a) Federal income taxes	-10,586	-32,934
48	(b) State income taxes	573	5,640
49	(c) Other income taxes	66	118
50	Provision for deferred taxes	130,977	99,843
51	TOTAL PROVISION FOR INCOME TAXES (lines 47 through 52)	121,028	72,667
52	Income from continuing operations (line 46 minus line 51)	203,134	97,468
53	Income or loss from operations of discontinued segments (less income tax)	0	0
54	Gain or loss on disposal of discontinued segments (less income taxes)	0	0
55	Income before extraordinary items (lines 52 through 54)	203,134	97,468
56	Extraordinary items (Net)	0	0
57	Income taxes on extraordinary items	0	0
58	Provision for deferred taxes - Extraordinary items	0	0
59	TOTAL EXTRAORDINARY ITEMS (lines 56 through 58)	0	0
60	Cumulative effect of changes in accounting principles (less income taxes)	0	0
61	Net income (Loss) (lines 55 + 59 + 60)	203,134	97,468
62	Net revenues from railway operations	458,645	323,892
63	Income taxes on ordinary income (-)	-9,949	-27,176
64	Provision for deferred income taxes (-)	130,977	99,843
65	Income from lease of road and equipment (-)	4,765	5,357
66	Rent for leased roads and equipment (+)	123,556	114,352
67	NET RAILWAY OPERATING INCOME	456,408	360,220

2001 CSXT

210. RESULTS OF OPERATIONS
(Dollars in Thousands)

Line No.		Amount for current year (b)	Amount for preceding year (c)	Freight-related revenue & expenses (d)
1	Freight	6,215,057	6,245,927	6,215,057
2	Passenger	0	0	0
3	Passenger-related	0	0	0
4	Switching	0	0	0
5	Water transfers	62,823	54,361	62,823
6	Demurrage	0	0	0
7	Incidental	77,013	60,403	77,013
8	Joint facility - credit	98,703	101,629	98,703
9	Joint facility - debit	0	0	0
10	Railway operating revenues (Exclusive of transfers from govt. auth. (1-9))	0	0	0
11	Railway operating revenues - transfers from govt. auth.	6,453,596	6,462,320	6,453,596
12	Railway operating revenues - amortization of	0	0	0
13	TOTAL RAILWAY OPERATING REVENUES (lines 10-12)	6,453,596	6,462,320	6,453,596
14	Railway operating expenses	5,994,951	6,138,428	5,994,951
15	NET REVENUE FROM RAILWAY OPERATIONS	458,645	323,892	458,645
16	Revenue from property used in other than carrier operations	15,929	18,397	
17	Miscellaneous rent income	13,580	29,817	
18	Separately operated properties - profit	0	0	
19	Dividend income (cost method)	3,481	4,735	
20	Interest income	0	0	
21	Income from sinking and other funds	0	0	
22	Release of premiums on funded debt	0	0	
23	Reimbursements received under contracts and agreements	26	26	
24	Miscellaneous income	0	0	
25	a. Dividends (equity method)	27,970	1,814	
26	b. Equity in undistributed earnings (losses)	0	0	
27	TOTAL OTHER INCOME (lines 16-26)	-10,823	-4,648	
28	TOTAL INCOME (lines 15, 27)	50,163	50,141	
29	Expenses of property used in other than carrier operations	508,808	374,033	
30	Miscellaneous taxes	7,628	10,420	
31	Separately operated properties-Loss	0	0	
32	Maintenance of investment organization	0	0	
33	Income transferred under contracts and agreements	0	0	
34	Miscellaneous income charges	0	0	
35	Uncollectible accounts	79,278	75,660	
36	TOTAL MISCELLANEOUS DEDUCTIONS	86,906	86,080	
37	Income available for fixed charges	421,902	287,953	

VERIFIED STATEMENT OF ROBERT J. (BOB) BELL

My name is Robert J. (Bob) Bell. I am President of Bolen-Brunson-Bell Lumber Company, Inc. (BBB). My business address is 3175 Johnson Avenue, P.O. Box 11205, Memphis, TN 38111. BBB is a wholesale distributor of lumber and forest products. BBB is a closely-held company owned solely by me and members of my family.

BBB's lumber yard is located on the Cordova rail line of CSX Transportation, Inc. (CSXT) at Milepost No. 223.1. That is BBB's only place of business. CSXT embargoed rail service on the Cordova line effective March 1, 2001. Prior to that embargo, BBB was a significant user of CSXT's rail service. In the year 2000, BBB received 198 carloads. In the first two months of 2001 prior to the embargo, BBB received 33 carloads. On an annualized basis, that would have resulted in the same 198-car rail volume as in 2000.

The rail traffic received by BBB consisted of commodity-type forest products, such as two-by-fours, that are used for general construction purposes. Those are relatively high-volume, low-cost products that can be received much less expensively by rail than by truck. BBB also received by truck, and continues to receive, specialty-type forest products, such as one-by-six redwood, that is used in more limited construction applications. Those are smaller-volume, higher-cost products that lend themselves more readily to truck transportation. In the year 2000, 77 percent of total forest products received by BBB were received by rail.

Most of the rail traffic received by BBB was "reload" traffic, i.e., traffic received in conjunction with a rail-to-truck transloading business conducted by BBB. BBB's customers in

*APPENDIX 4 - Opening Statement
Finance Docket No. 34236
VS - Robert J. (Bob) Bell
Page 1 of 6*

that business were retail lumber dealers in the Memphis area that do not have the ability to receive forest products directly by rail. Reload traffic was consigned to the dealers, not BBB. Forest products consigned to those dealers would be unloaded and stored at Bellwood Reload. The dealers would send small trucks to pick up quantities of those products from time to time, as needed. Of the 198 cars received at Bellwood Reload in 2000, 180 consist of reload shipments.

BBB has lost all of its reload business as a result of its inability to receive rail shipments at Bellwood Reload. BBB's only place of business is Bellwood Reload. When BBB lost the ability to transload from rail to truck at Bellwood Reload, it lost the ability to conduct a reload business. It was not feasible for BBB to conduct a reload business at CSXT's Leewood Yard or at other rail-served locations in the Memphis area that lack adequate indoor storage space and office facilities. Where there is inadequate storage, forest products have to be transloaded directly from railcars to trucks. At three truckloads per railcar, the small trucks used for intermittent customer pickup from indoor storage would not be able to handle that quantity of forest products on a continuous basis. BBB does not own any trucks of the required carrying capacity. Consequently, BBB would have to hire commercial trucks to deliver the products to reload customers. The resulting trucking costs would more than cancel out the revenue BBB received for the reload service.

Some of the forest products formerly reloaded by BBB are now being reloaded at CSXT's Leewood Yard. That traffic is being reloaded by L&D Transports, a motor carrier which has sufficient trucks of the required capacity to conduct the reloading operation successfully. BBB does not derive revenue of any kind from those reloaded shipments. Railcars to be reloaded by

L&D are consigned directly to retail lumber dealers "care of" BBB. CSXT notifies BBB of arrival of those railcars at Leewood Yard. BBB in turn notifies L&D and the retail dealer. L&D transloads the products from railcars to trucks and delivers the products by truck to the dealers. BBB does not reload those products. The products are not transported to or from Bellwood Reload. BBB acts solely as a "notify" party as an accommodation to some of its former reload customers who remain as customers of the forest products business that BBB operates for its own account.

BBB received \$500 per railcar as compensation for receiving its customers' forest products by rail at Bellwood Reload. Attached to my statement as Appendix RJB-1 is a copy of a typical BBB invoice in that amount issued to Tom Eubanks Lumber Co. on Jan. 9, 2001 for reloading Railcar TTLX 856317. Retail dealers without rail service were willing to pay that amount because it would have cost them much more to receive shipments directly by truck from distant origins than by rail to Bellwood Reload plus the \$500 reload charge. The dealers were paying the reload charge in recognition of BBB's ability to reduce their freight charges as a result of receipt of shipments by rail, rather than for physical services provided by BBB. In fact, there was very little handling of reload shipments by BBB. Except for minimal fuel costs for forklifts used in unloading railcars, there were no costs that were directly assignable to the reload operation. The personnel, equipment and storage space used in the reload operation were taking advantage of excess capacity in the conduct of BBB's business for its own account. The costs for personnel, equipment and storage would have been essentially the same whether or not the reload

business was handled. Consequently, the amount received by BBB for reloading was tantamount to the profit that it lost when deprivation of rail service caused BBB to lose its reload business.

BBB was likely to have received 180 railcars per year in its reload operation but for CSXT's refusal to provide rail service. That is based on BBB's actual receipt of 198 railcars at Bellwood Reload in 2000, the last full calendar year before the embargo, of which 180 carloads were reload cars. That quantity is also supported by the 33 railcars that BBB received in the first two months of 2001, immediately before the embargo, which would amount to the same 198-car volume when annualized. In the proceeding on CSXT's application for authority to discontinue rail service to Bellwood Reload, CSXT projected future rail traffic to Bellwood Reload at 198 carloads per year. BBB agreed with that projection, and continues to do so here.

On that basis, BBB is losing profits of \$90,000 per year in reload business no longer handled due to loss of rail service ($180 \times \$500$). The total lost profits would be \$127,500 from the date of the embargo through September 30, 2002 ($\$90,000 \div 12 \times 17$). Lost profits are continuing during the pendency of the complaint.

The remainder of the rail traffic received by BBB was business for its own account. That traffic was consigned directly to BBB, not to retail dealers. The ultimate purchaser of that traffic was not known at the time of the rail shipment. That traffic was unloaded at Bellwood Reload and stored there until a purchaser was found.

Since the embargo, BBB has been receiving that traffic in rail-truck reload service either at CSXT's Leewood Yard, at the Memphis railyard of Canadian National Railroad (CN), or at a CN team track known as Peebles. The reloading at Leewood Yard and the Peebles track has

been performed by L&D Transports at a charge of \$500 per railcar. The reloading at the CN yard has been performed by GST Corporation at a charge that has varied between \$5.50 and \$6.50 per 1,000 board feet. Those reloading charges are caused by the embargo inasmuch as the rail freight charges to the points of reloading are the same as the rail freight charges to Bellwood Reload prior to the embargo.

My Appendix RJB-2 consists of copies of all of L&D's invoices for reloading charges paid by BBB between the beginning of the embargo and September 30, 2002. Those charges total \$13,500.

My Appendix RJB-3 is a compilation of the reloading charges paid by BBB to GST Corporation between March 22, 2001 and September 30, 2002, inclusive, in the total amount of \$12,076.

The rail-truck transportation used by BBB on traffic for its own account was the lowest-cost transportation alternative available to BBB. It would have been far more costly for BBB to have received that traffic from origin directly by truck.

From the beginning of the embargo and on a continuing basis, BBB made CSXT aware that BBB desired and intended to continue to ship by rail over the line. BBB specifically requested that CSXT remove the embargo and restore rail service. Those contacts were made by Mr. Noonon E. Greene, a BBB employee, to Mr. Bill Provident, CSXT's Director of Product Performance, Midwest Region, and later to Mr. Mike Katula of CSXT. CSXT was well aware that prior to the embargo, BBB had been a significant and consistent user of the rail line. On one such occasion, Mr. Katula of CSXT asked Mr. Greene to identify the physical facilities that BBB

would require in order to be able to conduct its reload business at an alternate rail-served location. Although Mr. Greene provided that information, CSXT did not follow up with any proposal. Throughout the embargo, CSXT made it known to BBB that CSXT was not going to restore rail service on the Cordova line.

VERIFICATION

STATE OF TENNESSEE)
) SS:
COUNTY OF SHELBY)

ROBERT J. (BOB) BELL, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.



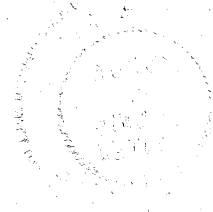
ROBERT J. (BOB) BELL

SUBSCRIBED AND SWORN to
before me this 21 day
of October, 2002.



Notary Public

My Commission Expires: 9-13-05



BELLWOOD RELOAD

3175 JOHNSON AVE
MEMPHIS, TN. 38112
(901) 327-8190 FAX (901) 327-8199

JAN 9, 20001
INVOICE 10921-2
TERMS: NET 10 DAYS

TOM EUBANKS LUMBER COMPANY
SCOTT STREET
MEMPHIS, TN.

CAR TTZX856317, 2X8 HF. FOR UNLOADING & RELOADING

\$500.00

THANK YOU \$500.00

L & D TRANSPORTS

P.O. BOX 2143
MEMPHIS, TN 38101
PH # 901-543-9217
FAX # 901-543-2993

Invoice

Date	Invoice #
9-30-01	929

Bill To
BOLEN-BRUNSON-BELL LUMBER CO., INC 3175 JOHNSON AVE MEMPHIS, TN 38112

		P.O. No.	Terms	Project
			Due on receipt	
Item	Qty	Description	Rate	Amount
5	CARS	<u>RELOAD SERVICES</u>	\$500.00	\$2,500.00
		CHTT 273006		
		ATW 50046		
		TTZX 863418		
		TTZX 86483		
		TTZX 861799		
		UNLOADED FROM CSXT		
			Total	\$0.00

L & D TRANSPORTS

P.O. BOX 2143
MEMPHIS, TN 38101
PH # 901-543-9217
FAX # 901-543-2993

Invoice

Date	Invoice #
11-30-01	1025

Bill To
BOLEN-BRUNSON-BELL LUMBER CO., INC 3175 JOHNSON AVE MEMPHIS, TN 38112

		P.O. No.	Terms	Project
			Due on receipt	
Item	Qty	Description	Rate	Amount
4	CARS	<u>RELOAD SERVICES</u>	\$500.00	\$2,000.00
		CRLE 20649		
		TTZX 863242		
		CHTT 273317		
		TTZX 856674		
		UNLOADED FROM CSXT		
Total			\$0.00	

L & D TRANSPORTS

P.O. BOX 2143
MEMPHIS, TN 38101
PH # 901-543-9217
FAX # 901-543-2993

Invoice

Date	Invoice #
12-30-01	1220

Bill To
BOLEN-BRUNSON-BELL LUMBER CO., INC 3175 JOHNSON AVE MEMPHIS, TN 38112

		P.O. No.	Terms	Project
		Due on receipt		
Item	Qty	Description	Rate	Amount
3	CARS	<u>RELOAD SERVICES</u>		
		TTZX 861727		
		SSAM 38724		
		TTZX 864660		
		UNLOADED FROM CSXT	\$ 500.00	\$1,500.00
			Total	\$0.00

L & D TRANSPORTS

P.O. BOX 2143
MEMPHIS, TN 38101
PH # 901-543-9217
FAX # 901-543-2993

Invoice

Date	Invoice #
MAR 15 2002	3155

Bill To
BOLEN-BRUNSON-BELL LUMBER CO., INC 3175 JOHNSON AVE MEMPHIS, TN 38112

		P.O. No.	Terms	Project
		Due on receipt		
Item	Qty	Description	Rate	Amount
6	CARS	<u>RELOAD SERVICES</u>		
		TTZX 864660		
		TTZX 863441		
		TR 165567		
		CNA 555123		
		BNSF 559517		
		AERC 7320		
		UNLOADED AT LEEWOOD YARD	\$500.00	\$3,000.00
Total			\$0.00	

L & D TRANSPORTS

P.O. BOX 2143
MEMPHIS, TN 38101
PH # 901-543-9217
FAX # 901-543-2993

Invoice

Date	Invoice #
JUN10, '02	6305

Bill To
BOLEN-BRUNSON-BELL LUMBER CO., INC 3175 JOHNSON AVE MEMPHIS, TN 38112

		P.O. No.	Terms	Project
		Due on receipt		
Item	Qty	Description	Rate	Amount
CARS	5	<u>RELOAD SERVICES</u>		
		CNA 554 376	PEEBLES	
		HLSC 2819	PEEBLES	
		LW 74155	LEEWOOD	
		SSAM 038678	PEEBLES	
		TTZX 86657	LEEWOOD	
			\$500.00	\$2,500.00
Total				\$0.00

L & D TRANSPORTS

P.O. BOX 2143
MEMPHIS, TN 38101
PH # 901-543-9217
FAX # 901-543-2993

Invoice

Date	Invoice #
7-25-02	7255

Bill To
BOLEN-BRUNSON-BELL LUMBER CO., INC 3175 JOHNSON AVE MEMPHIS, TN 38112

		P.O. No.	Terms	Project	
		Due on receipt			
Item	Qty	Description	Rate	Amount	
CARS	3	<u>RELOAD SERVICES</u>		\$500.00	\$1,500.00
		CNA 555082	PEEBLES		
		CNA 553292	PEEBLES		
		DOMAN LONGS	PEEBLES		
Total				\$0.00	

L & D TRANSPORTS

P.O. BOX 2143
MEMPHIS, TN 38101
PH # 901-543-9217
FAX # 901-543-2993

Invoice

Date	Invoice #
9-30-02	9306

Bill To

BOLEN-BRUNSON-BELL LUMBER CO., INC
3175 JOHNSON AVE
MEMPHIS, TN 38112

		P.O. No.	Terms	Project
		Due on receipt		
Item	Qty	Description	Rate	Amount
CARS	1	<u>RELOAD SERVICES</u>		\$500.00
		CN 557275	PEEBLES	
Total			\$0.00	



INVOICE

Remit To:
P.O. Box 2121
Memphis, TN 38159

BOLEN-BRUNSON-BELL
3175 JOHNSON AVE.

12878

MEMPHIS

TN 38112

Ship Date	Trailer #	Reference #	Invoice Date	Invoice #	Invoice Amount
3/22/01	CLC 9581	1347	3/22/01	1924851-1	550.00
4/30/01	LW 74142	1365	4/30/01	1953507-1	550.00
4/30/01	HLSC2811	1376	4/30/01	1953508-1	550.00
4/30/01	MP 368318	1396	4/30/01	1953509-1	504.60
4/30/01	RBOX38122	1369	4/30/01	1953513-1	527.77
6/28/01	CN 555162	1403	6/28/01	1999986-1	517.82
6/28/01	SLR 4509	1450	6/28/01	1999988-1	517.82
6/28/01	SFLC90238	1448	6/28/01	1999992-1	550.00
6/28/01	NOKL733882	1405	6/28/01	1999995-1	550.00
6/28/01	CN 553567	1462	6/28/01	1999997-1	516.46
6/28/01	CN 554294	1468	6/28/01	2000002-1	517.36
6/28/01	TTZX864237	1478	6/28/01	2000063-1	550.00
6/28/01	GTW 309634	1506	6/28/01	2000067-1	518.26
6/28/01	CN554134	1507	6/28/01	2000064-1	469.14
7/30/01	IBT 22003	1541	7/30/01	2022363-1	550.00
10/22/01	CN 553456	1577	10/22/01	2085969-1	513.17
10/22/01	CN 553430	1576	10/22/01	2085973-1	524.40
10/22/01	MLR 21491	1574	10/22/01	2085975-1	559.57
10/22/01	TTZX 86284	1564	10/22/01	2085977-1	550.00
12/19/01	CN 554025	1764	12/19/01	2126730-1	524.40
2/27/02	CN 555123	1819	2/27/02	2171148-1	524.40
3/29/02	CN 553664	1889	3/29/02	2193058-1	485.30
3/29/02	CN 554424	1890	3/29/02	2193059-1	485.30

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2002, I served the foregoing document, Opening Statement, by UPS overnight mail on Louis E. Gitomer, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005; and on Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

Thomas F. McFarland

Thomas F. McFarland