

HARKINS CUNNINGHAM LLP

Attorneys at Law

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Paul A. Cunningham
202.973.7601

pac@harkinscunningham.com

**SURFACE
TRANSPORTATION BOARD**

Suite 600
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2615

Telephone 202.973.7600
Facsimile 202.973.7610



209323

November 5, 2003

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, N.W.
Washington, DC 20423-0001

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**SURFACE
TRANSPORTATION BOARD**

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NOV 05 2003

**Part of
Public Record**

**Re: Canadian National Railway Company and Grand Trunk
Corporation – Control – Duluth, Missabe and Iron Range Railway
Company, Bessemer and Lake Erie Railroad Company, and The
Pittsburgh & Conneaut Dock Company (STB Finance Docket No.
34424)**

Dear Mr. Williams:

Enclosed for filing in the above-referenced docket please find an original and 10 copies of the Railroad Control Application of Canadian National Railway Company and Grand Trunk Corporation (designated as CN-2). This application includes related notices of exemption for trackage rights in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2).

Separate checks for \$5,900 and for \$1,900 are enclosed for the filing fees for the primary application and for the related notices of exemption, in accordance with 49 C.F.R. §§ 1002.2(d)(i)(2), 1002.2(f)(41)(iii), and 1002.2(f)(40)(iv).

I have also enclosed diskettes containing the text of the Railroad Control Application, including supporting verified statements, in WordPerfect 6/7/8/9/10 format, as required by 49 C.F.R. § 1104.3(b). These diskettes also include PDF files for certain of the map exhibits contained in the application.

PHILADELPHIA
2800 One Commerce Square
2005 Market Street
Philadelphia, PA 19103-7042
215.851.6700

NEW YORK
One Penn Plaza
25th Floor
New York, NY 10119-2532
212.329.1750

HARKINS CUNNINGHAM LLP

Attorneys at Law

Mr. Vernon A. Williams, Secretary

November 5, 2003

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In accordance with 49 C.F.R. § 1180.6(a)(7)(ii), Exhibit 2 of the Application is a copy of the Stock Purchase Agreement dated as of October 19, 2003, between GTC and Great Lakes Transportation LLC. That copy, however, was redacted to exclude certain sensitive information.

In accordance with the Protective Order issued by the Board in this proceeding,¹ CN is filing an unredacted version of Stock Purchase Agreement under seal simultaneously with the Railroad Control Application. That unredacted version will be made available on request to outside counsel and consultants, representing or retained by to parties to this proceeding, who have signed the confidentiality undertaking prescribed in the Protective Order to govern disclosure of HIGHLY CONFIDENTIAL information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul A. Cunningham".

Paul A. Cunningham

Enclosures

¹Decision No. 1 (STB served Oct. 29, 2003).

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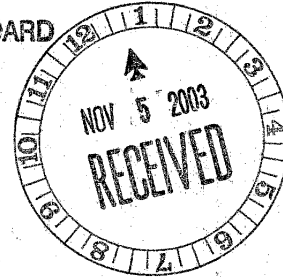
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Public Record

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**SURFACE
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**SURFACE
TRANSPORTATION BOARD**
BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34424



CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION

- CONTROL -

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY,
BESSEMER AND LAKE ERIE RAILROAD COMPANY,
AND THE PITTSBURGH & CONNEAUT DOCK COMPANY

RAILROAD CONTROL APPLICATION

Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, PQ H3B 2M9
(514) 399-5430

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Paul A. Cunningham
Richard B. Herzog
Gerald P. Norton
James M. Guinivan
HARKINS CUNNINGHAM LLP
801 Pennsylvania Avenue, N.W., Suite 600
Washington, D.C. 20004-2664
(202) 973-7600

*Counsel for Canadian National Railway Company
and Grand Trunk Corporation*

November 5, 2003

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TABLE OF ABBREVIATIONS

AAR	Association of American Railroads
Agreement	Stock Purchase Agreement among Canadian National Railway Company, Grand Trunk Corporation, and Great Lakes Transportation LLC, executed on October 19, 2003
ALK	ALK Technologies, Inc.
ANPR	Advanced Notice of Proposed Rulemaking
Applicants	CNR and GTC
Application	Application by CN and GTC for Control of DMIR, B&LE, and P&C Dock
BEA	Business Economic Area
B&LE	Bessemer and Lake Erie Railroad Company
B&LE Holdings	B&LE Holdings Corp.
Blackstone	The Blackstone Group
BN	Burlington Northern Railroad Company
BNSF	The Burlington Northern and Santa Fe Railway Company
<i>BN/Santa Fe</i>	<i>Burlington N. Inc. – Control & Merger – Santa Fe Pac. Corp.</i> , STB Finance Docket No. 32549
CCP	Chicago, Central & Pacific Railroad Company
CN	CNR and subsidiaries
CNR	Canadian National Railway Company
CN/GLT Transaction	CN's acquisition of the GLT Railroads or its acquisition of the GLT Carriers (depending on context)
<i>CN/WC Application</i>	Railroad Control Application (CN/WC-2) filed Apr. 9, 2001, <i>Canadian Nat'l Ry. – Control – Wisc. Cent. Transp. Corp.</i> , STB

Finance Docket No. 34000

CP	Canadian Pacific Railway Company and subsidiaries
CRRC	Cedar River Railroad Company
CSX	CSX Corp., CSX Transportation, Inc., and subsidiaries
CTC	Centralized Traffic Control
DMIR	Duluth, Missabe and Iron Range Railway Company
DMIR Holdings	DMIR Holdings Corp.
DWP	Duluth, Winnipeg and Pacific Railway Company
EA	Environmental Assessment
EIS	Environmental Impact Statement
EVTAC	Eveleth Mines, LLC, doing business as EVTAC Mining
FRA	Federal Railroad Administration, U.S. Department of Transportation
Frisco	The St. Louis-San Francisco Railway Company
GLF	Great Lakes Fleet, Inc
GLF Holdings	GLF Holdings Corp.
GLT	Great Lakes Transportation LLC
GLT Railroads	DMIR, B&LE, and P&C Dock
GLT Carriers	GLF and the GLT Railroads
GTC	Grand Trunk Corp.
GTW	Grand Trunk Western Railroad Inc.
IC	Illinois Central Corp. or Illinois Central Railroad Company, depending on context

ICC	Interstate Commerce Commission
Ispat Inland	Ispat Inland Steel, Inc.
KCS	The Kansas City Southern Railway Company
MDW	Minnesota, Dakota & Western Railway Company
MSI	Metal Strategies Inc.
NEPA	National Environmental Policy Act of 1969
P&C Dock	The Pittsburgh & Conneaut Dock Company
P&C Holdings	P&CD Holdings Corp.
SCTC	St. Clair Tunnel Company
SEA	Section of Environmental Analysis, Surface Transportation Board
SIP	Safety Integration Plan
SPLC	Standard Point Location Code
SRS	Service Reliability Strategy
SSMB	Sault Ste. Marie Bridge Company
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
TFM	Transportacion Ferroviaria Mexicana, S.A. de C.V.
Transaction	CN's proposed acquisition of the GLT Railroads or its acquisition of all the GLT Carriers (depending on context)
Transtar	Transtar, Inc
UP	Union Pacific Railroad Company
UP/SP	<i>Union Pac. Corp., et. al.—Control & Merger—S. Pac. Rail Corp., et. al., STB Finance Docket No. 32760</i>

USS	United States Steel Corp..
USX	USX Corp.
Waterloo	Waterloo Railway Company
WC	Wisconsin Central Transportation Company
WCL	Wisconsin Central Ltd.
WCLL	Wisconsin Chicago Link Ltd.

In addition, the United States Postal Services' standard 2-letter abbreviations are used for states in the United States, and the Canadian Post Office's 2-letter abbreviations are used for Canadian provinces.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34424

CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
– CONTROL –
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY,
BESSEMER AND LAKE ERIE RAILROAD COMPANY,
AND THE PITTSBURGH & CONNEAUT DOCK COMPANY

RAILROAD CONTROL APPLICATION

INTRODUCTION
(SECTION 1180.6)

Canadian National Railway Company (“CNR”) and Grand Trunk Corporation (“GTC”)¹ hereby apply under 49 U.S.C. §§ 11323-11325 and the Board’s Railroad Consolidation Procedures, 49 C.F.R. Part 1180,² for authorization for CNR (a rail carrier that presently controls several rail carrier subsidiaries) and GTC (a non-carrier holding company through which CNR controls its U.S. rail subsidiaries)³ to acquire control of Duluth, Missabe and Iron Range Railway

¹CNR and GTC are referred to collectively as “CN” or as “Applicants.” These and the other principal abbreviations used in this Application are listed in a Table of Abbreviations following the Table of Contents.

²All section references in this Application are to Title 49 of the Code of Federal Regulations, unless otherwise noted.

³Through its GTC subsidiary, CN controls the following rail carriers subject to the STB’s jurisdiction: Grand Trunk Western Railroad Incorporated (“GTW”), Duluth, Winnipeg and

Company ("DMIR"), Bessemer and Lake Erie Railroad Company ("B&LE"), and The Pittsburgh & Conneaut Dock Company ("P&C Dock").⁴

Applicants request that the Board treat the proposed acquisition of DMIR, B&LE and P&C Dock as a "minor" transaction. Under the Board's rules, a transaction not involving the merger or control of two or more Class I railroads is classified as minor if the Board can determine either:

- (1) That the transaction clearly will not have any anticompetitive effects, or

Pacific Railway Company ("DWP"), St. Clair Tunnel Company ("SCTC"), Illinois Central Railroad Company ("IC"), Chicago, Central & Pacific Railroad Company ("CCP"), Cedar River Railroad Company ("CRRC"), Waterloo Railway Company ("Waterloo"), Wisconsin Central Ltd. ("WCL"), Sault Ste. Marie Bridge Company ("SSMB"), and Wisconsin Chicago Link Ltd. ("WCLL").

⁴DMIR, B&LE, and P&C Dock are wholly owned subsidiaries of DMIR Holdings Corp. ("DMIR Holdings"), B&LE Holdings Corp. ("B&LE Holdings"), and P&CD Holdings Corp. ("P&C Holdings"), respectively. DMIR Holdings, B&LE Holdings, and P&CD Holdings are all non-carriers, and are all wholly owned subsidiaries of Great Lakes Transportation LLC ("GLT"). DMIR, B&LE, and P&C Dock are therefore referred to herein as the "GLT Railroads." GLT is owned by Great Lakes Transportation Holdings, L.P., an affiliate of The Blackstone Group ("Blackstone").

GLT also owns 100% of the stock of GLF Holdings Corp. ("GLF Holdings"), which in turn owns 100% of the stock of Great Lakes Fleet, Inc. ("GLF"), a non-railroad that owns a fleet of vessels carrying ore and other bulk commodities on the Great Lakes. Together, GLF and the GLT Railroads are referred to herein as the "GLT Carriers." CN proposes to acquire GLF at the same time as the GLT Railroads, but this Application only extends to the acquisition of the GLT Railroads, as the acquisition of GLF, a water carrier, is not subject to the Board's jurisdiction. Reviews by the U.S. Maritime Administration and Coast Guard are required for CN's acquisition of GLF. That acquisition is also subject to review under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a. Under the parties' Stock Purchase Agreement, consummation of the acquisition of any of the GLT Carriers is dependent on the successful completion of regulatory reviews, including those for GLF.

In this Application, depending on the context, the term "CN/GLT Transaction" or "Transaction" refers either to CN's acquisition of the GLT Railroads or to its acquisition of all the GLT Carriers.

(2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

49 C.F.R. §§ 1180.2(b). Applicants submit that the Transaction satisfies both parts of this test.

First, the Transaction would have no anticompetitive effects. It would connect two transportation systems that do not compete but instead complement each other and would together create a stronger network. There would be no "2-to-1" shippers on the CN/GLT system, and only one "3-to-2" shipper, which would not be adversely affected by a nominal reduction in horizontal competition. Moreover, the Transaction would bring about no vertical foreclosure, no reduction in effective geographic competition, and no increase in market power.

Second, by placing the GLT Railroads in the hands of a rail carrier with a proven record of customer service rather than a financial investor, the Transaction would provide continuity and stability to those railroads and enhanced service capabilities for customers of the GLT Railroads and CN. Further, the Transaction would give CN ownership of the 17-mile segment of DMIR track in the Duluth, MN/Superior, WI area between Nopeming Junction, MN, and South Itasca, WI, over which all CN traffic between Winnipeg and Chicago (including transnational traffic fostered by NAFTA) now moves. Common control would also permit CN to move this traffic more efficiently by allowing opportunities for "directional running" over the parallel CN and DMIR lines north of Duluth/Superior between Shelton Junction, MN, and Nopeming Junction.⁵ This would reduce transit time and increase service reliability over CN's

⁵CN's existing line between Shelton Junction and Nopeming Junction is owned and operated by its DWP subsidiary. With directional running, for example, DWP trains could operate over the parallel DMIR track in one direction, and DMIR trains could operate over the DWP track in the other. This would require a reciprocal grant of trackage rights. Accordingly, along with this Application, CN is submitting notices of exemption in sub-dockets to this

entire Winnipeg-Chicago corridor. Thus, the Transaction not only would have no anticompetitive effects, but also would enable operational changes that would produce significant public benefits.

Applicants therefore request that the Board afford the Transaction the expeditious review appropriate for minor transactions.⁶

BRIEF SUMMARY OF TRANSACTION
(SECTION 1180.6(a)(1)(i))

The Parties

CNR was incorporated in 1919 as one of Canada's two transcontinental railroads, extending from Halifax on the Atlantic to Vancouver and Prince Rupert on the Pacific. DWP, which has been a CN subsidiary since creation of the CN system in 1919, extends that system from the international border at Duluth Junction/Ranier over DWP's own lines to Nopeming Junction, MN, and by trackage rights over DMIR to South Itasca, WI (near Superior). Since 1923, the CN system has also included GTW, which extends CN's system to Chicago from the international border at Port Huron/Sarnia and Detroit/Windsor.

In 1999, recognizing the growing importance of north-south traffic to the North American economy, CN acquired IC in order to position itself to better serve this growing market by extending its system from Chicago to the Gulf Coast. As a result of that transaction and of CN's 1998 marketing alliance with The Kansas City Southern Railway Company ("KCS"), CN

proceeding (Finance Docket No. 34424 (Sub-Nos. 1 and 2)), providing for the reciprocal grant of trackage rights between DWP and DMIR.

⁶CN suggests a procedural schedule for the Board's review of this Application in the Petition Suggesting Procedural Schedule filed simultaneously with the Application.

has become part of a NAFTA rail network offering shippers access to TFM, Mexico's largest rail system. In 2001, CN acquired WCL and its affiliates, thus providing CN with a connection between Chicago and the CN lines west of the Great Lakes.⁷

Great Lakes Transportation LLC is a holding company that owns all of the issued and outstanding shares of common stock of non-carriers DMIR Holdings, B&LE Holdings, P&CD Holdings, and GLF Holdings. Those non-carriers, in turn, own all of the issued and outstanding shares of common stock of DMIR (a Class II railroad operating in northeastern Minnesota), B&LE (a Class II railroad operating between Conneaut, OH, on Lake Erie, and North Bessemer (near Pittsburgh), PA), P&C Dock (a Class III railroad performing switching operations and loading and unloading operations between B&LE and water-borne vessels at Conneaut, OH), and GLF (a non-railroad that owns a fleet of vessels carrying bulk commodities on the Great Lakes), respectively. These GLT Carriers evolved over the years to satisfy the transportation needs of the steel-making facilities that were the predecessors of United States Steel Corporation ("USS," known for a period as USX Corporation ("USX")), of which they were wholly owned subsidiaries until 1988. In that year, USX transferred the GLT Carriers and several other USX-owned rail and water carriers to Transtar, Inc. ("Transtar"), a holding company established by USX, together with Blackstone Capital Partners L.P. and Blackstone Transportation Partners L.P. (affiliates of The Blackstone Group), to control those companies.⁸

⁷ This connection is completely under CN ownership, with the above-noted exception of the 17-mile segment between Nopeming Junction, MN and South Itasca, WI, over which CN operates by means of trackage rights granted by DMIR.

⁸ *Blackstone Capital Partners – Exemption from 49 U.S.C. 10746, 11321, & 11343*, Finance Docket No. 31363 (ICC served Dec. 23, 1988). Blackstone held 51% of the voting interest and 56% of the economic interest in Transtar. USX held the remaining 49% of the

In 2001, GLT, a new Blackstone affiliate incorporated as a transportation holding company, acquired DMIR, B&LE, P&C Dock, and GLF from Transtar.⁹

DMIR is a Class II rail carrier that was formed in 1937 with the consolidation of two predecessor railroads. It owns 212 miles of track that it operates in northeastern Minnesota and is the largest common carrier of pelletized iron ore in the United States. The pelletized ore is loaded at DMIR-served pellet plants in the Mesabi Range and hauled either to DMIR-owned docks on Lake Superior at Duluth or Two Harbors, where it is loaded into Lake vessels for shipment to customers' steel plants, or to interchange points with other railroads. B&LE was formed from several predecessor railroads in 1900 under Andrew Carnegie to protect a route for iron ore from Lake Erie to Carnegie's Pittsburgh steel mills. It connects the port at Conneaut, OH, on Lake Erie, with the Pittsburgh area. The principal commodities it carries are coal, iron ore, and limestone. P&C Dock performs switching operations and ship-to-rail and rail-to-ship bulk transfer operations for B&LE at three docks at Conneaut, OH.

The CN/GLT Agreement

Blackstone's ownership interest in the GLT Carriers, first through Transtar beginning in 1988 and then through GLT since 2001, has been Blackstone's longest-held investment in an actively traded financial portfolio. Looking to reorient its investments, however, in 2003 Blackstone approached a number of potential buyers, including CN, for the GLT Carriers. In Blackstone's ensuing discussions, sale of the GLT Carriers to CN emerged as

voting interest and 44% of the economic interest in Transtar.

⁹At that time, Transtar (which still owns several Class II and III railroads) became a wholly owned subsidiary of USX. *See USX Corp. – Control Exemption – Transtar Inc.*, STB Finance Docket No. 33942, slip op. at 1-2 (STB served Nov. 30, 2000).

the superior option, likely reflecting the higher efficiencies CN could realize from the Transaction and the added value Blackstone could derive from placing the GLT carriers as a unit with a transportation provider that could operate them over the long run as a strategic investment.¹⁰

GTC and GLT have entered into a Stock Purchase Agreement (the “Agreement”), dated as of October 19, 2003. The Agreement provides that, subject to STB acceptance of this Application as a “minor” transaction, subsequent STB authorization of that Transaction, and other conditions, GTC will purchase from GLT all the issued and outstanding shares of DMIR Holdings, B&LE Holdings, P&CD Holdings, and GLF Holdings for an overall purchase price of \$380 million, subject to adjustments as provided for in the Agreement.

Applicants’ Names, Addresses, and Telephone Numbers

The names, business addresses and telephone numbers of Applicants are:

Canadian National Railway Company
935 de La Gauchetière Street West
Montréal, PQ H3B 2M9
(514) 399-5430

Grand Trunk Corporation
935 de La Gauchetière Street West
Montréal, PQ H3B 2M9
(514) 399-5430

In addition, the names, business addresses and telephone numbers of the GLT

Railroads are:

¹⁰Blackstone presumably had the option of selling the GLT Carriers to another financial investor, but such a buyer might not be able to serve customers as effectively as one specializing in surface transportation. Blackstone also could have pursued the piecemeal sale of the GLT Carriers, but this would likely have weakened for some customers, including USS, what has been an integrated iron-ore delivery chain from the ore mines to the steel plants.

Duluth, Missabe and Iron Range Railway Company
135 Jamison Lane
Monroeville, PA 15146-2330
(412) 829-6892

Bessemer and Lake Erie Railroad Company
135 Jamison Lane
Monroeville, PA 15146-2330
(412) 829-6892

The Pittsburgh & Conneaut Dock Company
135 Jamison Lane
Monroeville, PA 15146-2330
(412) 829-6892

The names and address of counsel to whom questions regarding this Application may be addressed are shown on the cover of the Application.

PROPOSED TIME SCHEDULE
(SECTION 1180.6(a)(1)(ii))

Simultaneously with the Application, Applicants are filing a Petition Suggesting a Procedural Schedule and request that the Board adopt the schedule provided therein. If the Board were to adopt the proposed schedule, it would be able to issue a final decision in this proceeding before the 180-day deadline provided by statute. If the Transaction is approved, CN would consummate control of the GLT Railroads as soon as possible after the final order of the Board approving this Application and authorizing the proposed control transaction has become effective. Because CN plans few operational changes in connection with the Transaction, it expects to have fully implemented that Transaction shortly after consummation of CN control of the GLT Railroads.

PURPOSE OF THE TRANSACTION
(SECTION 1180.6(a)(1)(iii))

CN has three primary purposes in pursuing the acquisition of the GLT Railroads. The first was to give CN full ownership of its route between Winnipeg and Chicago, including the 17-mile segment between Nopeming Junction, MN, and South Itasca, WI, over which CN must operate today by means of trackage rights granted by DMIR.¹¹ Second, ownership of the GLT Railroads would give CN full ownership of and access to the DMIR line between Shelton Junction, MN, and Nopeming Junction, MN. Ownership of this line, which at no point is located more than 12 miles from CN's line, would increase CN's operational flexibility by permitting CN to use the two parallel lines much like a double-tracked railroad. This would enable CN to institute "directional running" on the two lines, so that, for example, southbound trains could operate over the DMIR line, while northbound trains could operate over the parallel CN line, so that CN could reduce transit times while providing even more reliable service.¹² Further, by transferring a portion of the traffic now using CN's existing line to the DMIR line, which has newer ties and newer and heavier rail than CN's existing line, CN would be able to avoid capital expenditures that would otherwise be required for centralized traffic control ("CTC") and extensions of sidings on CN's existing line between Shelton Junction and Nopeming Junction.

¹¹Similarly, one of the chief reasons for CN's acquisition of WC in 2001 was to secure ownership of the route used for CN freight between Superior, WI, and Chicago, IL. *See* 1 Railroad Control Application (CN/WC-2) at 4 (filed Apr. 9, 2001), *Canadian Nat'l Ry. – Control – Wisc. Cent. Transp. Corp.*, STB Finance Docket No. 34000 ("CN/WC Application"); *id.* at 108-09 (Verified Statement of Paul M. Tellier).

¹²Even without obtaining control of DMIR, CN could improve its operational flexibility by obtaining trackage rights over this line. Only ownership of both lines, however, would give CN operational control of the lines, which would permit it to optimize operations for the overall benefit of shippers on both CN and DMIR.

Finally, acquisition of the GLT Carriers, which provide an important supply line for the North American steel industry, would enable CN to develop closer and more extensive relationships with companies in and serving that industry. These purposes are discussed in further detail in the Verified Statement of Gerald P. Radloff.

**NATURE AND AMOUNT OF ANY NEW
SECURITIES OR OTHER FINANCIAL ARRANGEMENTS**
(SECTION 1180.6(a)(1)(iv))

No new securities have been or would be issued in connection with Applicants' acquisition of control of the GLT Carriers. The purchase price would be paid in cash on the closing date under the Agreement. CN anticipates that it would borrow this amount, combining its existing revolving credit facility and long-term debt. CN also anticipates that these borrowings would be partially repaid over time with internally generated funds.

PUBLIC INTEREST JUSTIFICATIONS
(SECTION 1180.6(a)(2))

The CN/GLT Transaction would benefit the public interest by helping to ensure the longevity and financial stability of the GLT Railroads and their customers. In contrast to Blackstone, a financial investor seeking to leave the transportation industry, CN is a successful rail carrier that will have the commitment and ability to make long-term investments in plant, equipment, and systems as they become needed. The Transaction would enable CN to lower its maintenance costs and to improve transit times and reliability for shippers by using the parallel CN and DMIR lines between Shelton Junction and Nopeming Junction for its freight moving between western Canada and Chicago. These and other benefits are more fully described in the Verified Statement of E. Hunter Harrison, the Verified Statement of Gerald P. Radloff, the

Verified Statement of J. Edward Terbell, and the Operating Plan (Exhibit 15).

The Transaction would achieve these public benefits without adversely affecting competition, safety, or the environment. Because of the limited scope of the Transaction and the record of CN and its constituent railroads over the past decade in successfully implementing rail consolidations,¹³ the good operating condition of both systems, and the absence of any need for a sweeping “Day One” change in systems, the Transaction would present a low risk of implementation-related service difficulties.

EFFECTS ON COMPETITION
(SECTION 1180.6(a)(2)(i))

There would be no harm to competition from CN’s acquisition of the GLT Railroads. The proposed transaction would not harm horizontal competition. There are no shippers receiving rail service from both CN and GLT today for which the Transaction would reduce the number of independent railroads serving them from two to one (“2-to-1 shippers”),¹⁴

¹³ For example, CN’s acquisition of WC in 2001 and IC in 1999, IC’s acquisition of CCP and CRRC in 1996, and WC’s acquisition of Fox River Valley Railroad Corporation and Green Bay and Western Railroad Company in 1993.

¹⁴ Until May 2003, Eveleth Mines, LLC, doing business as EVTAC Mining (“EVTAC”), operated a plant at Fairlane, 11 miles south of Virginia, MN, that processed raw iron ore into taconite pellets. While only DMIR was physically capable of carrying iron ore to, or processed taconite pellets from, the loading and unloading tracks at that facility, both CN and DMIR could provide general freight service (*i.e.*, for commodities other than iron ore and taconite) to and from the facility. The EVTAC plant was therefore a 1-to-1 facility for iron ore and a 2-to-1 facility for general freight. EVTAC closed that facility in May 2003. If, however, the EVTAC facility should reopen and require rail service, CN is prepared to offer competitive access to another railroad for general freight, in order to restore two-railroad competition for that traffic. To that end, CN intends, should EVTAC reopen, to negotiate a trackage rights agreement permitting another carrier to serve EVTAC, or, if traffic volumes were too low to justify the railroad operating its own trains and crews, to provide haulage service or switching at a rate that would not disadvantage the other railroad.

and there is only one shipper for which the Transaction would arguably reduce the number of independent serving railroads from three to two, and that possible “3-to-2” shipper would not be harmed competitively, as Christopher A. Vellturo explains in his verified statement, attached to this Application.

Nor would the Transaction cause adverse “vertical” effects on competition.¹⁵

Applicants would keep all existing active gateways affected by the Transaction open on commercially reasonable terms. Applicants would also waive any defenses they might otherwise have as a result of the Transaction, under the Board’s general policy that it does not separately regulate bottleneck rates, in circumstances where a shipper prior to the Transaction would have been entitled to regulation of a bottleneck rate under the Board’s “contract exception” to the general rule. Moreover, there would be no harm to shippers from reduction in source or geographic competition because, as explained in greater detail in the Verified Statements of

CN would expect to negotiate the terms of such access through voluntary agreement with a competing railroad, but it is possible that the parties might be unable to agree on such terms. CN would therefore consent to the Board’s retaining jurisdiction over the proposed Transaction after a final decision approving this Application, for the limited purpose of imposing an appropriate condition giving competitive access in case EVTAC should again require rail service, and the parties should be unable to agree on appropriate terms.

¹⁵In theory, adverse vertical effects on competition can arise when a railroad that has market power in one geographic market merges with a connecting railroad and, as a result of the merger, extends its market power to the connecting railroad’s territory, closing gateways and thus foreclosing other connecting railroads from participating in movements to or from the first railroad’s service area. Such vertical effects, however, are unlikely as a matter of economic theory, *see, e.g., Western Resources, Inc. v. STB*, 109 F.3d 782, 786-90 (D.C. Cir. 1997) (describing Board’s “one-lump theory” as “rel[ying] on a broadly accepted economic proposition”), and the Board has received no evidence in recent proceedings sufficient to persuade it that such effects actually do or are likely to occur. In any event, Applicants would not engage in such foreclosure by closing efficient gateways. *See* Verified Statement of Gerald P. Radloff at 16-17.

Gerald P. Radloff and Christopher A. Vellturo, CN and the GLT Railroads do not serve competing origins or destinations.

**FINANCIAL CONSIDERATION; OPERATING ECONOMIES;
INCREASE IN TRAFFIC, REVENUES AND EARNINGS
(SECTION 1180.6(a)(2)(ii))**

Financial Consideration. Under the Agreement, GTC would pay \$380 million in cash to GLT for all issued and outstanding shares of common stock in DMIR Holdings, B&LE Holdings, P&CD Holdings, and GLF Holdings. *See* “Summary of Transaction (Section 1180.6(a)(1)(i)),” above.

Increase in Traffic, Revenues, and Earnings; Economies to be Effected in Operations. Applicants have not anticipated any increases in total traffic and revenue handled by CN and the GLT Railroads as a result of the Transaction. *See* Verified Statement of J. Edward Terbell. They do anticipate, however, that the Transaction would lead to more efficient operations and permit efficiency-related cost reductions.

**EFFECT OF INCREASE IN TOTAL FIXED CHARGES
(SECTION 1180.6(a)(2)(iii))**

As described above (*see* “Nature and Amount of Any New Securities or Other Financial Arrangements” (Section 1180.6(a)(1)(iv))), CN expects to meet the cash requirements for consummation of the Transaction by borrowing under its existing revolving credit facility, combined with long-term debt.

CN does not expect to incur any additional capital expenditures (other than the cost of integrating information technology) to implement the Transaction, and CN anticipates that the incremental fixed charges attributable to the Transaction would be easily absorbed. With

the addition of the GLT Carriers, CN would continue to be a financially strong enterprise with a strong balance sheet. If CN should need to make capital investments in infrastructure in order to maintain or improve service after implementation of the Transaction, it would have the financial resources to do so. CN's financial strength would enable it to meet the challenges of maintaining and enhancing its high quality rail service, improving its operations, and enhancing shareholder value.

EFFECT ON ADEQUACY OF TRANSPORTATION
(SECTION 1180.6(a)(2)(iv))

The Transaction would help ensure the long-term viability of the GLT Railroads and their customers by placing those Railroads under control of an enterprise that specializes in rail transportation, and would permit faster, more reliable service for customers moving freight over CN's lines between western Canada and Chicago.

The Transaction would not have any adverse impact on the continuation of essential transportation services to the public. The ability of other rail carriers to furnish essential services would not be affected.

The benefits of the Transaction are described further in the Operating Plan (Exhibit 15), the Verified Statement of J. Edward Terbell, and the Verified Statement of Gerald P. Radloff.

EFFECT ON EMPLOYEES
(SECTION 1180.6(a)(2)(v))

The effect of the Transaction on the Applicants' employees is addressed in the Labor Impact Exhibit set forth as Attachment B to the Operating Plan.

Applicants acknowledge that the Transaction would be subject to the employee

protective conditions and other procedures adopted in *New York Dock – Control – Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979).

EFFECT OF INCLUSION OF OTHER RAILROADS
(SECTION 1180.6(a)(2)(vi))

Applicants do not contemplate the inclusion of other railroads in the Transaction. The Transaction would not cause the loss of any essential rail service, and inclusion of other rail carriers would not be in the public interest.

OTHER SUPPORTING STATEMENTS
(SECTION 1180.6(a)(3))

Attached to this Application is the Verified Statement of E. Hunter Harrison, President and Chief Executive Officer of CNR, describing the purpose of the Transaction and its benefits to CN and the public. Also attached are verified statements by CN employees Gerald P. Radloff, discussing the purpose and benefits of the Transaction and its effects on competition, and J. Edward Terbell, describing the preparation of the Operating Plan found at Exhibit 15 to this Application, as well as the Verified Statement of Christopher A. Velturo, Ph.D., founder and President of Quantitative Economic Solutions LLC, presenting expert economic testimony on the competitive impact of the Transaction.

OPINION OF COUNSEL
(SECTION 1180.6(a)(4))

The opinion of Applicants' counsel that the transaction described in this Application satisfies the requirements of law and would be legally authorized and valid if approved by the Board appear in Appendix A of the Application.

LIST OF STATES
(SECTION 1180.6(a)(5))

Listed below are the states in which each Applicant carrier owns rail property over which it conducts railroad operations:

CN-Related Rail Carriers

CNR: Michigan, Minnesota, New York, and Vermont

GTW: Illinois, Indiana, Michigan, and Ohio

DWP: Minnesota and Wisconsin

SCTC: Michigan

IC: Alabama, Illinois, Kentucky, Louisiana, Mississippi, and Tennessee

CCP: Illinois, Iowa, and Nebraska

CRRC: Iowa and Minnesota

Waterloo: Mississippi¹⁶

WCL: Illinois, Michigan, Minnesota, and Wisconsin

SSMB: Michigan and Wisconsin

WCLL: Illinois

GLT Railroads

DMIR: Minnesota, Wisconsin

¹⁶In addition, Waterloo holds a freight operating easement over a line of railroad in Maine, but it does not presently conduct rail operations on that line. On October 6, 2003, the Trustee for Bangor and Aroostook Railroad Company, the owner of the line subject to Waterloo's easement, filed an application with the Board seeking, among other things, the adverse (*i.e.*, involuntary) abandonment of Waterloo's easement. *Waterloo Ry. – Adverse Abandonment – Lines of Bangor & A. R.R. in Aroostook County, ME*, STB Docket No. AB-124 (Sub-No. 2). That application is pending before the Board.

B&LE: Ohio, Pennsylvania

P&C Dock: Ohio

MAP – EXHIBIT 1
(SECTION 1180.6(a)(6))

Exhibit 1 (set forth at Appendix B) includes three maps. The first map (Map A) depicts the entire CN and GLT systems in the United States and Canada. The second map (Map B) provides details about DMIR's service area, including DMIR's own lines, short line connections, other rail lines in the territory, and principal geographic points, while the third map (Map C) provides similar details about B&LE's and P&C Dock's service areas.

NATURE AND TERMS OF TRANSACTION
(SECTION 1180.6(a)(7)(i))

See "Summary of Transaction (Section 1180.6(a)(1)(i))" above.

AGREEMENTS – EXHIBIT 2
(SECTION 1180.6(a)(7)(ii))

A copy of the Stock Purchase Agreement between GTC and GLT is provided as Exhibit 2 of this Application. The version of Exhibit 2 that is filed on the public record has been redacted to exclude sensitive material. An unredacted version has been filed under seal, subject to the protective order issued in Decision No. 1, served in this proceeding on October 29, 2003.

DESCRIPTION OF RESULTING COMPANY
(SECTION 1180.6(a)(7)(iii))

Pursuant to the Agreement, GTC would acquire all of the outstanding and issued common stock of DMIR Holdings, B&LE Holdings, and P&CD Holdings, which would thus become wholly owned subsidiaries of GTC. CN has no present plans to merge any of these holding companies into any other entity in the CN system, or to merge any of the GLT Railroads

with any of CN's other subsidiaries. Since there is no planned merger or consolidation, this section is not applicable.

COURT ORDER – EXHIBIT 3
(SECTION 1180.6(a)(7)(iv))

Not applicable. No Applicant is a trustee, receiver, assignee, or personal representative of a real party in interest.

PROPERTY INCLUDED IN TRANSACTION
(SECTION 1180.6(a)(7)(v))

The property involved in the proposed Transaction is all the property owned by DMIR, B&LE, P&C Dock, and GLF.

**DESCRIPTION OF PRINCIPAL ROUTES, TERMINI,
POINTS OF INTERCHANGE, AND MILEAGE OF INVOLVED LINES**
(SECTION 1180.6(a)(7)(vi))

The principal routes of CN and GLT, the termini of the lines involved, and their main line and branch line mileage are generally described below.

CN's Principal Routes. As of September 30, 2003, CN's rail network consisted of 17,539 route miles in 15 states in the U.S. and eight Canadian provinces. CN does not separate its railroad system on the basis of main line versus branch line mileage.

CN is the only railroad in North America to cross the continent from east to west and from north to south, serving major ports on three coasts. Its principal routes run (1) east-west between Vancouver and Prince Rupert, BC, and Halifax, NS, serving every major metropolitan area in Canada; (2) between Buffalo and Chicago, serving the major U.S. metropolitan areas of Buffalo, Detroit, and Chicago; (3) between Winnipeg, MB, and Chicago; (4) north-south between Chicago and the Gulf of Mexico, reaching every major metropolitan area

on the Mississippi River, including Chicago, St. Louis, Memphis, and New Orleans; and (5) east-west between Chicago and Nebraska and Iowa, extending from Sioux City and Council Bluffs, IA, in the West to Chicago in the East.

Routes of the GLT Railroads. DMIR owns 212 miles of rail line in northeastern Minnesota and northern Wisconsin. DMIR's Missabe Main Line runs 74 miles in a generally north-south direction, between Mountain Iron and Duluth, MN. Its Iron Range Main Line runs 74 miles in a generally east-west direction, between Iron Junction (where the Missabe Main Line and the Iron Range Main Line intersect) and Two Harbors, MN. DMIR also operates 64 miles of branch lines. Among these branch lines are the Shaw Cut Off/Superior Branch, which runs 16 miles eastward from Emmert to Keenan, MN, where it meets the Missabe Main Line; the Taconite District, which is not contiguous with any other DMIR line, but runs 4.5 miles to the west of Calumet, MN; and the Interstate Branch/Spirit Lake Branch, which runs from Adolph, MN, on the Missabe Main Line, 23 miles in a generally southward and eastward direction through Nopeming Junction, MN, to South Itasca (near Superior), WI, where DMIR's property ends. DMIR's lines between Virginia, MN, in the north and Duluth, MN and South Itasca, WI, in the south are generally parallel to CN's lines between Virginia and South Itasca, and for the southernmost 17 miles of that corridor, CN and DMIR operate over the same track, pursuant to trackage rights granted by DMIR to CN's DWP subsidiary. DMIR also has trackage rights over 10 miles of CN track between Shelton and Minorca Junction, MN, and over 19 miles of BNSF track between Emmert and Calumet, MN, leading to DMIR's Taconite District.

B&LE's main line runs between North Bessemer and Albion, PA. In addition, B&LE branch lines run Albion and Conneaut, OH, and between Albion and Wallace Junction,

PA. P&C Dock does not own or operate any rail routes, but performs switching operations and ship-to-rail and rail-to-ship bulk transfer operations for B&LE at three docks at Conneaut, OH.

GLT's principal yard terminals and shop facilities are located at Proctor, MN, on DMIR and Greenville, PA, on B&LE. In addition, DMIR operates lakefront wharves and docks at Duluth and Two Harbors, MN.

Principal Routes of the Combined System. The principal routes of the combined rail system would be identical to those of the individual railroads, except that elimination of interchanges in the Duluth/Superior area may result in new through routes. The Transaction would not render any CN or GLT railroad track redundant, and there would therefore be no Transaction-related line abandonments.

GOVERNMENTAL FINANCIAL ASSISTANCE
(SECTION 1180.6(a)(7)(vii))

No governmental financial assistance is expected in connection with the Transaction.

ENVIRONMENTAL DATA – EXHIBIT 4
(SECTION 1180.6(a)(8))

Under the Board's rules implementing the National Environmental Policy Act of 1969 ("NEPA"), applicants seeking approval of an acquisition of control under 49 U.S.C. § 11323 ordinarily must submit an environmental report and a historical report before or simultaneously with their application, if the transaction would result in either (1) operational changes that would exceed any of the thresholds for environmental analysis established in the Board's rules, or (2) an action, such as construction or abandonment of a rail line, that would ordinarily require preparation of an environmental assessment ("EA") or an environmental

impact statement (“EIS”). 49 C.F.R. §§ 1105.6(b)(4), 1105.7(a). CN does not plan any line abandonment, line construction, or other related action ordinarily requiring an EA or an EIS under the Board’s rules. Because CN would own two parallel rail lines between Shelton Junction and Nopeming Junction after consummation of the Transaction, it could operate those lines as a paired track, giving it maximum operational flexibility. This would permit CN, for example, to institute directional running between Shelton Junction and Nopeming Junction. If this were done, CN anticipates that tonnage on portions of the DMIR lines could increase by 100% or more, which would exceed one of the Board’s thresholds for environmental analysis. 49 C.F.R. §1105.7(e)(5)(i)(A).

CN believes that, notwithstanding the formal thresholds set forth in the Board’s rules, the CN/GLT Transaction would bring about such limited operational changes that it would present no potential for significant environmental effects that would require environmental review under NEPA, and that therefore no environmental or historical report should be necessary. CN representatives have met with the Board’s Section of Environmental Analysis (“SEA”) to discuss these views, and with SEA’s permission CN is filing, in lieu of an environmental and historical report, an Environmental Appendix, describing those environmental effects of which CN is aware. CN is serving the Environmental Appendix on relevant federal, state, and local officials, and on all parties of record to this proceeding, and inviting them to comment to SEA on those environmental impacts, and stating their views as to whether those impacts are so insignificant that no EA or EIS is required by NEPA. If, on the basis of the information contained in the Environmental Appendix and comments received from the public, SEA determines that an EA or EIS is required, then CN will employ a third-party consultant, as

provided under the Board's rules, 49 C.F.R. § 1105.10(d), to prepare an EA or EIS, as appropriate.

MARKET IMPACT ANALYSES – EXHIBIT 12
(SECTION 1180.7)

Although 49 C.F.R. § 1180.7 does not require formal market analyses for a minor transaction such as the one proposed by Applicants, this Application includes various analyses of the market impact of the Transaction, including:

(1) The Verified Statement of Gerald P. Radloff, discussing benefits to shippers resulting from the CN/GLT Transaction and explaining the absence of adverse competitive effects as a result of that Transaction.

(2) The Verified Statement of Christopher A. Vellturo, explaining how shippers would not suffer any harm from reduction in source competition as a result of the proposed Transaction.

(3) The Verified Statement of J. Edward Terbell and the Operating Plan, discussing the benefits that the Transaction would provide shippers through improved services and increased efficiencies, enhancing those shippers' competitiveness.

As these analyses show, competition would be enhanced throughout the regions and in all economic sectors that would be served by the CN/GLT network. *See also* "Effects on Competition (Section 1180.6(a)(2)(i)), " and "Effect on Adequacy of Transportation (Section 1180.6(a)(2)(iv)), " above.

OPERATING PLAN – EXHIBIT 15
(SECTION 1180.8(b))

Applicants' Operating Plan (Exhibit 15 to this Application), describes how CN plans to integrate the GLT Railroads into its operations. The Verified Statement of J. Edward Terbell provides an overview about the Operating Plan and its development.

PRAYER FOR RELIEF

Wherefore, Applicants pray that the Board

(1) Enter an order under 49 U.S.C. §§ 11323 and 11324 granting approval and authority for CNR and GTC to acquire and exercise control of DMIR, B&LE, and P&C Dock; and

(2) Retain jurisdiction over the CN/GLT Transaction for a reasonable period for the purpose of reopening this proceeding if necessary to prescribe terms of access for a second rail carrier to provide service other than transportation of iron ore (including taconite) to or from the EVTAC pellet processing plant at Fairlane, MN, or to prescribe terms of access to a build-in or build-out point on the existing DWP line that would permit a second rail carrier to provide transportation of iron ore (including taconite) to that plant, if the EVTAC facility should resume operations and require rail service.

Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, PQ H3B 2M9
(514) 399-5430

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Respectfully submitted,



Paul A. Cunningham
Richard B. Herzog
Gerald P. Norton
James M. Guinivan
HARKINS CUNNINGHAM LLP
801 Pennsylvania Avenue, N.W., Suite 600
Washington, D.C. 20004-2664
(202) 973-7600

Counsel for Canadian National Railway Company and Grand Trunk Corporation

November 5, 2003

**SIGNATURES, OATHS, AND CERTIFICATIONS
OF APPLICANTS' EXECUTIVE OFFICERS
(SECTION 1180.4(c)(2)(i))**

**CANADIAN NATIONAL RAILWAY COMPANY,
AND GRAND TRUNK CORPORATION**

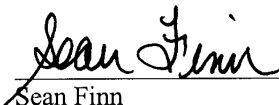
I, E. Hunter Harrison, declare under penalty of perjury under the laws of the United States that I am President and Chief Executive Officer of Canadian National Railway Company and Grand Trunk Corporation, applicants herein; that I am one of the executive officers duly authorized to sign, to verify, and to file this Application on behalf of the foregoing; that I have knowledge of the matters contained in this Application to the extent they relate to the foregoing; and that the statements in this Application are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'E. Hunter Harrison', written over a horizontal line.

E. Hunter Harrison

Executed on November 1, 2003

I, Sean Finn, hereby certify that I am Senior Vice-President Public Affairs, Chief Legal Officer and Corporate Secretary of Canadian National Railway Company and Grand Trunk Corporation, applicants herein, and that E. Hunter Harrison, President and Chief Executive Officer of Canadian National Railway Company and Grand Trunk Corporation, is duly authorized to sign, to verify, and to file this Application on behalf of Canadian National Railway Company and Grand Trunk Corporation.



Sean Finn
Senior Vice-President Public Affairs,
Chief Legal Officer and Corporate Secretary
Canadian National Railway Company
Corporate Secretary
Grand Trunk Corporation

Dated this 1st day of November, 2003

CERTIFICATE OF SERVICE

I certify that I have served a conformed copy of the foregoing Application in Finance Docket No. 34424, and conformed copies of verified statements, appendices, and exhibits in support of the Application, by first class mail, properly addressed with postage prepaid, or by a more expeditious manner of delivery, upon all persons required to be served as set forth in 49 C.F.R. § 1180.4(c)(5), namely:

(I) The Governor (or Executive Officer), the Public Service Commission, and Department of Transportation of each State in which any part of the real properties of Applicant carriers involved in the Transaction is situated;

(ii) The Secretary of the United States Department of Transportation (Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590);

(iii) The Attorney General of the United States;

(iv) The Federal Trade Commission;

(v) All parties of record in Finance Docket No. 34424; and

(vi) All other persons who requested a copy.

Dated at Washington, D.C., this 5th day of November, 2003.

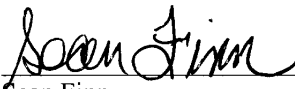
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**APPENDIX A
OPINION OF COUNSEL FOR APPLICANTS**

**Canadian National Railway Company
and Grand Trunk Corporation**

As Chief Legal Officer for Canadian National Railway Company ("CN") and Grand Trunk Corporation ("GTC") I am generally familiar with the proposed acquisition by CN and GTC of control of DMIR, B&LE, and P&C Dock. I have reviewed the foregoing joint Railroad Control Application (the "Application"). It is my opinion that the control transaction meets the requirements of the law, is within the corporate powers of CNR and GTC, and would be legally authorized and valid, if approved by the Surface Transportation Board. Capitalized terms used and not otherwise defined in this Opinion shall have the meanings specified in the foregoing Application.

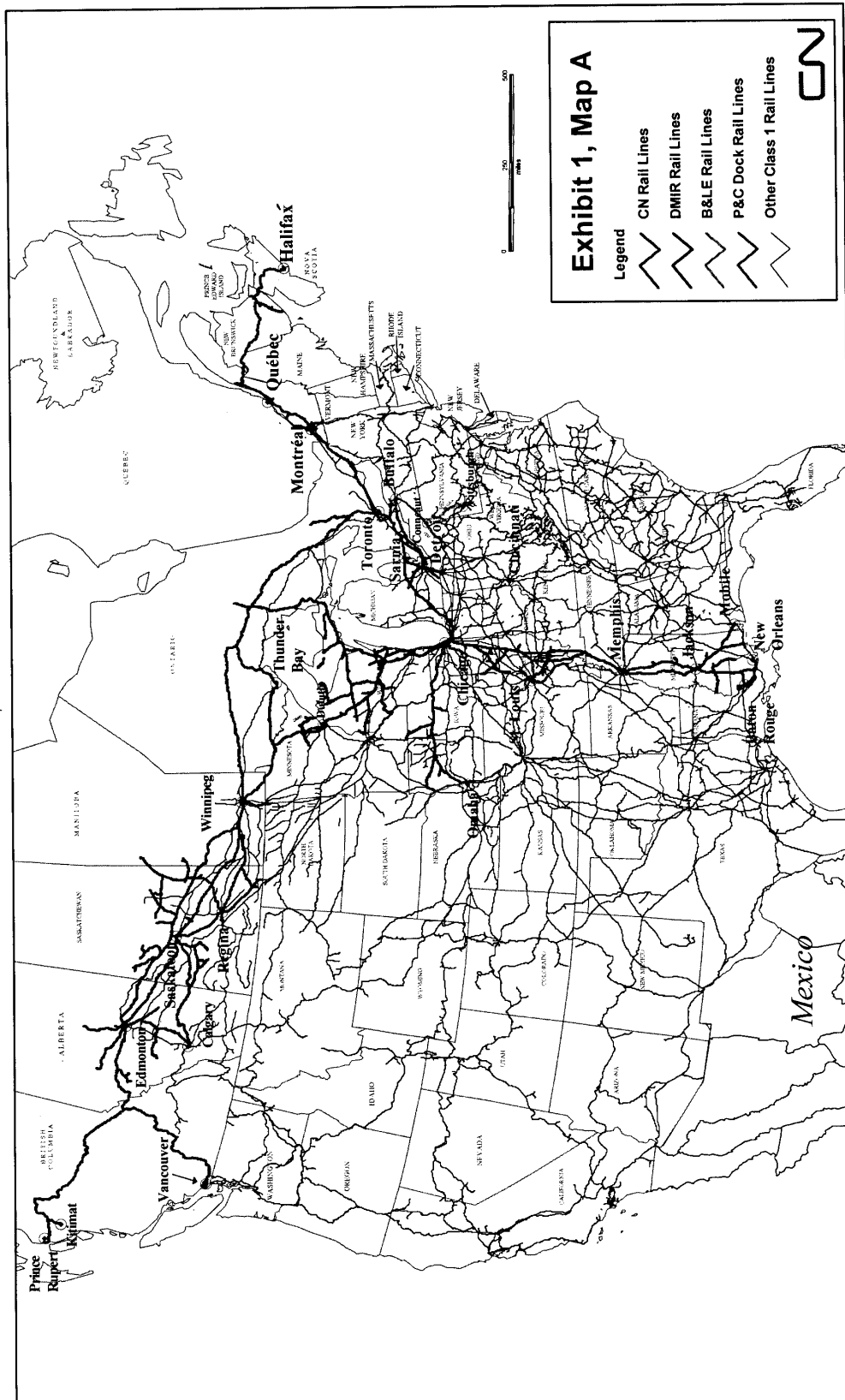


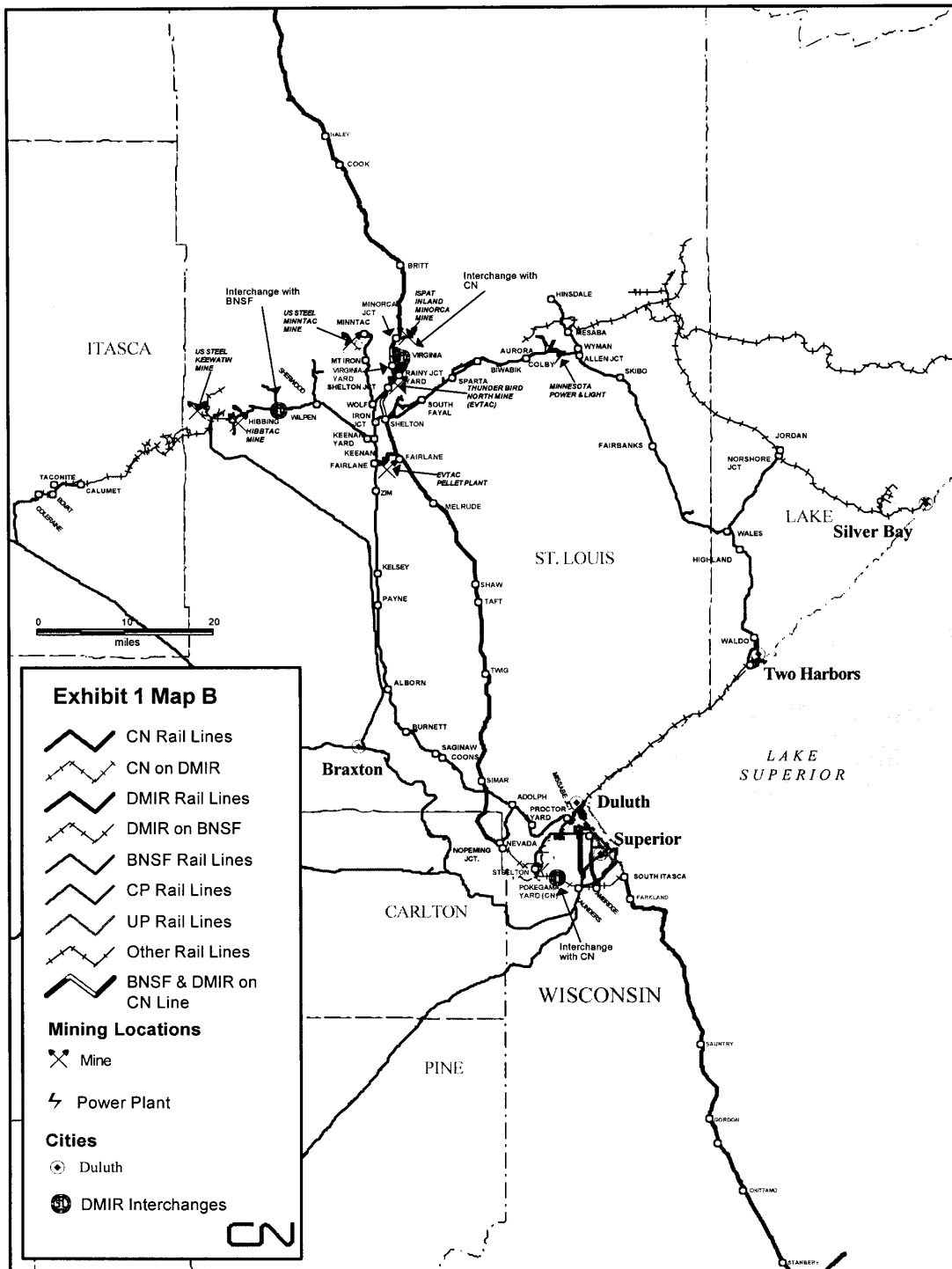
Sean Finn
Senior Vice-President Public Affairs, Chief Legal
Officer and Corporate Secretary
Canadian National Railway Company

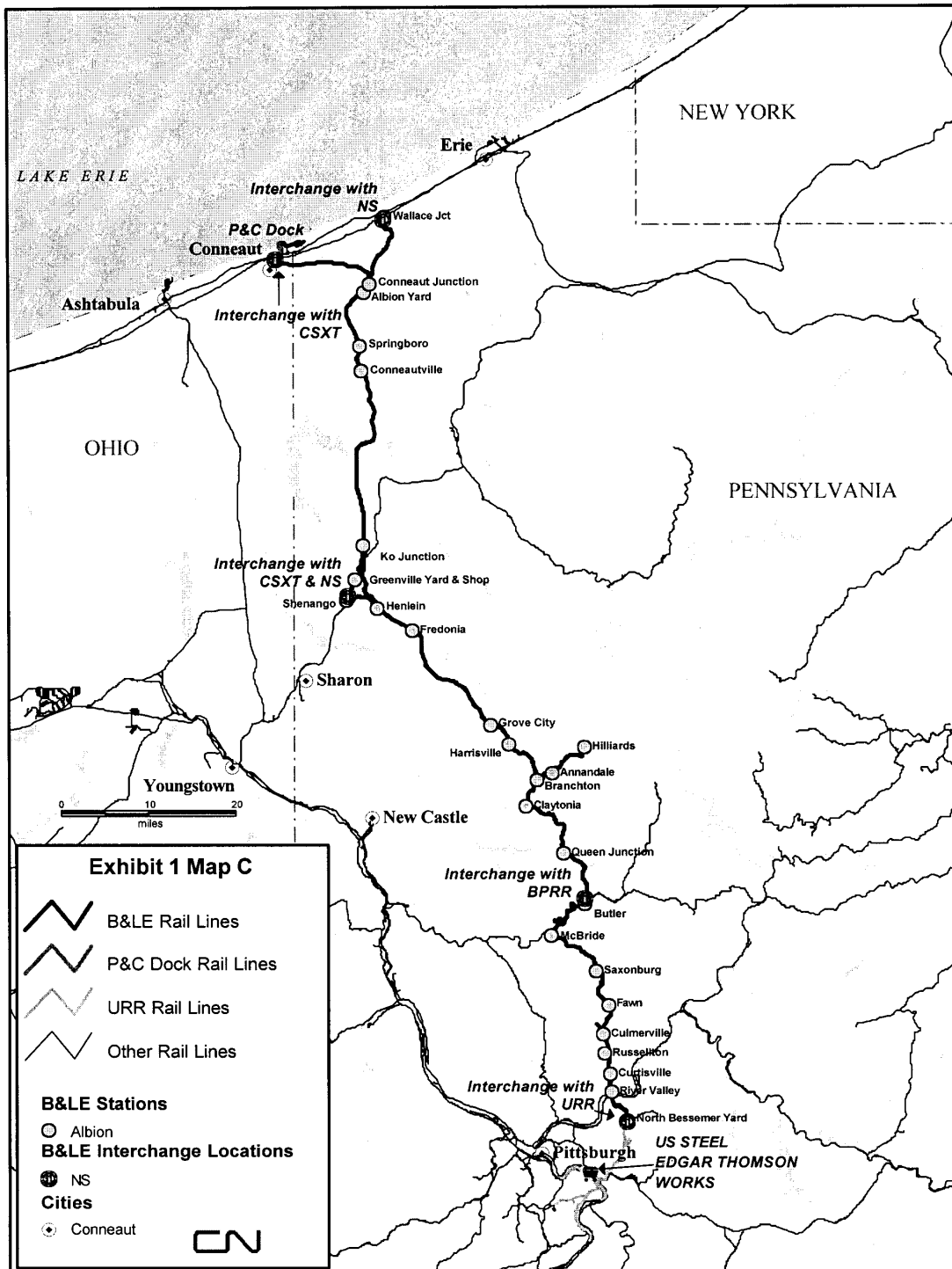
Dated this 1st day of November, 2003

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APPENDIX B
MAPS
(Exhibit 1)







**VERIFIED STATEMENTS IN
SUPPORT OF THE APPLICATION**

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**Verified Statement
Of
E. Hunter Harrison
President and Chief Executive Officer**

I am E. Hunter Harrison, President and Chief Executive Officer of Canadian National Railway Company ("CN"). My professional background is outlined in Attachment A to this statement.

SUMMARY OF STATEMENT

CN's acquisition of the three small railroad subsidiaries of Great Lakes Transportation LLC (the "GLT Railroads") would promote the public interest in a more efficient and reliable rail transportation system and would have no adverse competitive, safety, environmental, or financial effects.

Implementation of the CN/GLT Transaction would proceed smoothly and would result in meaningful service improvements, while assuring that the GLT Railroads' existing gateways to other railroads would remain open.

For these reasons, I respectfully urge this Board on behalf of CN to expeditiously review this proposed acquisition under the Board's procedures for minor transactions and approve it without delay.

Why CN is Making the Acquisition

Much of CN's north-south traffic moves over CN's main line between Winnipeg, MB and Chicago, IL. A portion of that route is over trackage rights on a 17-mile segment of track in the Duluth, MN/Superior, WI area that is owned by DMIR, one of the GLT Railroads,

and one of CN's principal goals in acquiring the GLT Railroads is to secure the ability to direct operations over this important segment.

Acquiring the GLT Railroads would also allow us to increase our operational flexibility, and move between Chicago and Winnipeg more efficiently, by using the parallel CN and DMIR lines in the 64-mile corridor north of Duluth/Superior like a double-track railroad.

Finally, this Transaction would give CN an opportunity to expand our service to the steel industry and to businesses serving that industry, offering enhanced service opportunities for current DMIR customers that would come from extending the reach of CN, North America's most efficient railroad, to the GLT Railroads.

Our achievement of these goals would enhance CN's transcontinental system. As all railroads have realized, the constant process of making incremental improvements such as these is one of the keys to maintaining and increasing their competitiveness in the transportation marketplace. These improvements will add to our capacity and ability to provide the services that our customers demand.

Public Benefits

The principal public benefits of the GLT acquisition would be analogous to the private benefits sought by CN: the assurance of reliable and more efficient service, an expanded service network and closer relationships with customers. In each instance, as CN improves its system, the public would benefit from a better and more competitive transportation system. The CN/GLT Transaction would also ensure the stability of the GLT Carriers by replacing a financial investor wishing to exit the transportation industry with CN, a company dedicated to transportation service with the proven operational and financial capacity to make the investments

that will enhance the interests of CN and its customers.

We would assure greater service reliability. We expect to increase asset productivity, eliminate redundant operations, and consolidate general and administrative functions. All of these efficiencies would contribute to the quality of our service, as would the network advantages, including enhanced single-line service, that this Transaction would bring to customers across the combined CN/GLT system. These improvements, in turn, would increase the value we can offer to customers and to the economy as a whole.

Our estimate of the labor impacts of the Transaction are outlined in the labor impact exhibit appended to the Operating Plan. We would seek to minimize those impacts through normal attrition, and to mitigate those impacts where practicable through the economic protections required by the Board, as well as through retraining. On the whole, the employees of the GLT Railroads would benefit from being part of CN, which would continue to grow and to provide a wider range of employment opportunities. The Transaction would have no significant adverse impacts on the environment and, indeed, should reduce fuel use and air emissions in the affected areas.

Implementation

As the Board knows, CN has an excellent record of implementing transactions safely and efficiently. Nothing has occurred since our last successful control transaction, the acquisition of the Wisconsin Central system, to reduce our implementation capacity, and we expect to extend that record in this case.

Of course, as we shall detail in our Safety Integration Plan, safety would continue to our top priority throughout and after the process of implementing this Transaction.

Implementing the Transaction should present little difficulty. There would be no redundant lines and hence no line abandonments, We plan no major yard changes, and no large-scale rearrangements of repair shops and other support facilities. The minor re-routing of traffic that we would undertake if we were to institute directional running over parallel CN and DMIR tracks should enhance, rather than diminish, system performance by reducing the need for train meets.

As we did in the CN/IC and CN/WC control transactions, we would assure all of our customers that their rail service will be as good as – or better than – the service they now receive from CN and the GLT railroads.

CN's Proposed Approach to STB Review

Because CN anticipates completing and implementing this Transaction successfully, because it would have no anticompetitive effects, and because the public would benefit from its prompt implementation, CN requests that the Board classify the Transaction as “minor” and review our Application under an expedited schedule.

CONCLUSION

For all of the reasons outlined above, on behalf of CN I respectfully urge that the Board promptly approve CN's acquisition of the GLT Railroads.

VERIFICATION

I, E. Hunter Harrison, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 1, 2003

A handwritten signature in black ink, appearing to read 'E. Hunter Harrison', written over a horizontal line.

E. Hunter Harrison

ATTACHMENT A

**Personal Background
Of
E. Hunter Harrison
President and Chief Executive Officer**

E. Hunter Harrison became President and Chief Executive Officer of Canadian National Railway Company on January 1, 2003. Before assuming that position, he had served as CN's Executive Vice-President and Chief Operating Officer during the previous five years. He was appointed to the Company's Board of Directors on December 6, 1999.

Prior to joining CN, Mr. Harrison had been President and Chief Executive Officer of Illinois Central Corporation (IC) and Illinois Central Railroad Company (ICRR), as well as a director of both IC and ICRR, from 1993 to 1998.

Mr. Harrison's railroad career began in 1964 when he joined the Frisco (St. Louis-San Francisco) Railroad as a carman-oiler in Memphis while still attending school. He advanced through positions of increasing responsibility in the operations function, first with the Frisco, then with Burlington Northern (BN) after BN acquired the Frisco in 1980. Before moving to IC and ICRR in 1989, he served as BN's Vice-President – Transportation, and Vice-President – Services Design.

With IC and ICRR, Mr. Harrison first held the position of Vice-President and Chief Operating Officer, becoming Senior Vice-President – Transportation in 1991, Senior Vice-President – Operations in 1992, and President and Chief Executive Officer the following year. During his career with Illinois Central, he initiated the concept of scheduled service for freight shipments, maintaining a sharp focus on operational efficiency and asset utilization. By 1996, he had succeeded in driving the railroad's operating ratio down by some 30 points to the low 60s – the best in the entire North American rail industry.

As CN's Executive Vice-President and Chief Operating Officer, he applied the same philosophy and methods, implementing an aggressive operating plan and refining the railroad's scheduled service to produce industry-leading operating ratios and on-time performance results.

Mr. Harrison was named North America's Railroader of the Year by *Railway Age* magazine in 2002.

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VERIFIED STATEMENT
OF
GERALD P. RADLOFF

INTRODUCTION AND QUALIFICATIONS

My name is Gerald P. Radloff. I am Assistant Vice President Marketing and Sales for Canadian National Railway Company ("CN").

I graduated from California State University San Francisco and Moss Landing Marine Laboratories in 1977 with a bachelor's degree in Biology. My career in the railroad industry began that year when I went to work with Southern Pacific Lines as a statistical engineer. Over the next 16 years, I held several positions with Southern Pacific, finally serving as Assistant Vice President - Intermodal Sales. I joined Illinois Central Railroad Company ("IC") in April 1995 and held several positions during the next four years. In July 1999, when IC was acquired by CN, I was serving IC as Assistant Vice President - Marketing and Sales Intermodal/Automotive and Metals and Minerals. Since then, I have been assigned a variety of duties by CN, and have held my present position as Assistant Vice President - Marketing and Sales since January 1, 2003.

Under the Stock Purchase Agreement (described in greater detail in the narrative portion of the Application and attached thereto as Exhibit 2), GLT has agreed to sell all of the outstanding shares of DMIR Holdings, B&LE Holdings, P&CD Holdings, and GLF Holdings for an overall purchase price of \$380 million, subject to such adjustments as are provided for in the Agreement. This transaction would give CN and GTC control of DMIR, B&LE, P&C Dock, and GLF.¹ I submit this verified statement to explain (1) the purposes of the CN/GLT Transaction

¹ As used herein, the "GLT Railroads" are DMIR, B&LE, and P&C Dock, and the "GLT Carriers" are the GLT Railroads and GLF. Depending on the context, the "CN/GLT

and the benefits it will bring to shippers on both the CN and GLT systems, and (2) why that Transaction will have no adverse effects on competition.

In Part I, I explain how shippers served by the GLT Railroads will benefit from service by CN, a transportation company with a proven track record of efficiency and customer service. I also describe advantages that existing CN shippers will gain from the relatively minor operating changes that CN plans to make as a result of the CN/GLT Transaction.

In Part II, I describe the nature of the Transaction and show that there are no “2-to-1” shippers (that is, shippers for which, as a result of the Transaction, the number of carriers providing rail service would drop from two to one) and only one “3-to-2” shipper, Koppers, Inc., which should, in any event, not be harmed by the Transaction. I also discuss the impact of the proposed Transaction on geographic competition, which I find would not be adversely affected by the Transaction, and explain why the Transaction would have no harmful “vertical effects” on competition.

I. RATIONALE AND BENEFITS OF THE TRANSACTION

CN has three primary purposes in pursuing the transaction. The first is to secure for CN ownership of the 17-mile DMIR segment between Nopeming Junction, MN, and South Itasca, WI, over which CN now has trackage rights and over which all CN traffic between Chicago and western Canada must flow.² The second is to obtain access to and ownership of the

Transaction” may refer to the acquisition of the GLT Carriers or to the acquisition of the GLT Railroads alone.

² Similarly, one of the chief reasons for CN’s acquisition of WC in 2001 was to secure ownership of the route used for CN freight between Superior, WI, and Chicago, IL. *See* 1 Railroad Control Application (CN/WC-2) at 4 (filed Apr. 9, 2001), *Canadian Nat’l Ry. – Control – Wisc. Cent. Transp. Corp.*, STB Finance Docket No. 34000 (“CN/WC Application”);

64-mile DMIR line between Shelton Junction, MN, and Nopeming Junction, MN, which, when combined with CN's existing line between those points, would enhance CN's operational flexibility by permitting CN to use the two parallel lines much like a double-tracked railroad. Thus, for example, CN would be able to institute "directional running" on the two lines, as described in the operating plan, which would allow CN to avoid capital expenses that it was otherwise planning to incur for signals and for extensions of sidings on its existing line between Shelton Junction and Nopeming Junction, while providing faster, more reliable service. Finally, because GLT provides an important supply line for the North American steel industry, CN expects that the acquisition of the GLT Carriers would allow it to develop closer and more extensive relationships with companies in and serving that industry.

The CN/GLT Transaction will not only provide these benefits to CN, but will also enable CN to provide significant benefits both to its own customers and to those now served by the GLT Carriers. First of all, the enhancement of CN's relationships with companies in the steel industry would not only provide CN with new opportunities to deepen its understanding of their transportation needs but would also provide them with similar opportunities to learn more about the range and quality of CN's transportation services. Those enhanced relationships should thus enable CN to work together with companies in and serving the steel industry to develop transportation solutions to their needs, drawing on the resources of CN's network, applying CN's high standards of customer service, and improving their competitiveness in an increasingly global steel marketplace.³

id. at 108-09 (Verified Statement of Paul M. Tellier).

³ For example, CN would be able to offer, not only single-line rail transportation options for movements that now require an interchange, but also (through GLF) water carrier service to docks served by CN and other railroads, and joint rail-water movements. As the GLT

Further, after consummation of the CN/GLT Transaction, customers of the GLT Railroads would be served, no longer by a railroad that is part of a stand-alone financial investment, but by a major transportation company with a proven track record of customer service and a rail network extending to three coasts in North America. CN, unlike a purely financial investor, specializes in providing rail transportation and plans to remain in that business for the long run. CN, which views the GLT Carriers as a strategic investment, will have the interest and resources to make longer-term investments in plant, equipment, and systems as they become needed to maintain the long-term stability and viability of the GLT Railroads as parts of the CN system.

CN would apply to the GLT Railroads the same high-quality management that has enabled CN to provide high-quality service, safely and at reasonable rates, to shippers throughout its system. CN's operating efficiency and transportation expertise would enable it to provide flexible transportation service, drawing on the skills and resources of its diversified transportation enterprise in responding to its customers' transportation needs.

The CN/GLT Transaction would also be of particular benefit to shippers of commodities (especially forest products, petroleum and chemical products, fertilizers, and intermodal freight) moving to or from Chicago over CN's DWP lines. Because CN would own two parallel lines between Shelton Junction and Nopeming Junction, it could institute directional running, in which loaded southbound trains would operate over the DMIR track, while returning empties and U.S. export traffic to Canada would move northward over the parallel DWP track.

Transaction expands CN service to the steel industry, CN would have greater ability to offer comprehensive options for service to or from multiple locations, including, for example, CN-served reloading centers located within trucking distance of steel mills producing reloadable products.

In this way, CN would be able to reduce meets, and thus potential congestion, on the DWP line. This would improve reliability and reduce transit times for this traffic, while enabling CN to maintain the highest safety standards.⁴

The CN/GLT Transaction would also eliminate interchanges between DMIR and CN, making possible single-line service for rail movements that the two railroads now carry in interline service, such as winter taconite hauls originating at Ispat Inland Steel's Minorca taconite plant at Virginia, MN, for delivery to CN's ore dock at Escanaba, MI.

II. THE CN/GLT TRANSACTION WOULD NOT HAVE ANY HARMFUL EFFECTS ON COMPETITION

A. Horizontal Competition

The CN/GLT Transaction presents no risk of reduced horizontal competition. As can be seen from Exhibit 1, Map A of the Application, B&LE's lines and the facilities of P&C Dock do not serve any territory served by CN. Those lines and facilities do not connect directly with CN or with the rail lines of DMIR, the third GLT Railroad. Although a water route connects DMIR in the west with B&LE and P&C Dock in the east, using vessels operated by GLF, CN has no route that parallels the DMIR/GLF/P&C Dock/B&LE route. The areas served

⁴ Directional running would also benefit shippers using DMIR's north-south line between Shelton Junction and Nopeming Junction, including the now-closed taconite plant at Fairlane, if that plant should ever reopen.

Until May 2003, the Fairlane plant was operated by Eveleth Mines, LLC, doing business as EVTAC Mining ("EVTAC"). The plant processed iron ore (originated at EVTAC's Thunderbird mine, located 10 miles to the north on DMIR) into taconite pellets. Those pellets were transported south on DMIR's north-south line to DMIR's ore dock in Duluth, MN, and incoming limestone and other materials were brought to the plant northward on the same line. EVTAC, however, closed the facility in May 2003, and since then there has been no rail traffic to or from Fairlane.

by DMIR's east-west lines between Emmert and Keenan, MN, and between Iron Junction and Two Harbors, MN, do not overlap any CN service areas. The only DMIR line that runs parallel to any CN line is the north-south Missabe Division main line, between Shelton Junction and South Itasca.

In recent rail merger cases, the STB has acted to preserve competitive rail options that might be lost to customers as a result of a merger or control transaction at "2-to-1" points (*i.e.*, points that receive rail service only from the two combining railroads and that after the transaction would therefore be served by a single rail system). Because CN does not operate in eastern Ohio or western Pennsylvania, it serves no points in common with either B&LE or P&C Dock, much less any 2-to-1 points or shippers.

CN and DMIR, however, both operate in northeastern Minnesota and northern Wisconsin. Accordingly, I have examined the possibility that the Transaction might reduce horizontal competition in the DMIR service area, and I have presented the results of that examination below. To identify any potential 2-to-1 locations in the DMIR service area, I first examined all stations that are presently served by both CN and DMIR and found that there are no 2-to-1 shippers affected by the Transaction, and only one arguable 3-to-2 shipper (Koppers, Inc., discussed below), which in any event would not suffer from a reduction in competition as a result of the Transaction. I then considered the possibility that the Transaction might eliminate transloading opportunities that provide competition between CN and DMIR,⁵ and concluded that,

⁵ Transloading is the transfer of freight from one mode to another, such as from truck to rail or from rail to truck. If a truck-to-rail transloading facility is exclusively served by one railroad, and a similar facility is exclusively served by a second, nearby railroad, and shippers have the option of transporting the relevant product by truck to either of those facilities, then it might be argued that a merger of the two railroads would reduce competitive options available to shippers.

to the extent any such options are available today, the Transaction would leave shippers with comparable options to transload their freight to or from BNSF, CP, or UP. I further considered the possibility that the Transaction might eliminate competition provided by build-in or build-out opportunities,⁶ and concluded that there is only one instance where such a possibility is even arguable, but that the facility is presently closed and receives no rail service from any carrier.⁷ Finally, I considered the possibility that the Transaction might make any short line railroads captive to the combined CN/GLT system, and found that it would not.

1. Jointly-Served Stations

In order to identify possible 2-to-1 locations in the DMIR service area, I reviewed the list of all stations in the Official Railroad Station List.⁸ For the purposes of this exercise, I regarded each six-digit Standard Point Location Code ("SPLC")⁹ as a separate station. I also

⁶ If a shipper that is exclusively served by one railroad could feasibly build its own line out from its facility to a connection with the line of a second railroad ("build-out"), or if a second railroad could feasibly build a new rail line into the shipper's facility ("build-in"), it might be argued that the merger of the two railroads would reduce competition by eliminating a build-in or build-out option that constrains the rates charged that shipper by the exclusively serving railroad.

⁷ If that facility should ever reopen and require rail service, CN is prepared, as I explain below, to provide competitive access to replicate any feasible build-in/build-out options now available.

⁸ A freight station is a point identified on a railroad's timetable, or a point to or from which a customer may move or price freight. The fact that a railroad lists a certain point does not necessarily mean that the railroad has access to that point. It may, for example, only use the point for interchanging freight cars with other railroads, or it may have authority, though a voluntary coordination agreement with a railroad directly serving that point, under which the quoting railroad will collect a rate and pay a division of that rate to the serving railroad according to an agreed-upon formula.

⁹ A SPLC is a code assigned under a system designed to identify each geographic point originating or receiving freight in North America with a unique numerical identifier. The first and second digits of the SPLC identify the state, province, or territory (or defined portion thereof); the third and fourth digits identify the county or equivalent subdivision of the area identified by the first two digits; and the fifth and sixth digits identify city or other specific

consulted with operating and marketing personnel familiar with the various locations and consulted such industry resources as the Official Railway Guide, the CN 9000 Switching Tariff, the DMIR 8002-J local and proportional Switching Tariff, and applicable switching tariffs of other railroads serving Northeast Minnesota and the Duluth, MN/Superior, WI area.

Based on these resources, I have determined that there are only eight stations that are served by both CN and DMIR: South Itasca, Ambridge, Saunders, and Pokegama, WI, and Steelton, Duluth, Fairlane, and Virginia, MN. Identifying these stations, however, is just the first step in evaluating the impact of this rail combination on horizontal competition. The relevant point of reference for determining whether such a combination may reduce horizontal competition is not how many railroads serve a rail station before and after the combination, but how particular rail customers are affected. Thus, if a 2-to-1 station contains no shipper facilities (as, for example, if it is merely an interchange point), then the combination of the only two railroads serving that station would not reduce competitive options for any shipper. Furthermore, if two shippers are located at the same station and each is served exclusively by a different railroad, then (absent transload or build-out possibilities, discussed below) the combination of those railroads would not harm either shipper, as each would be a “1-to-1” shipper; that is, each would be served by a single railroad after the combination, just as it was before. If, on the other hand, a shipper facility were served by two combining railroads and no other railroad, that facility would be a “2-to-1” facility and could be harmed by the loss of rail competition resulting from the combination.

location. SPLCs are assigned to each railroad station in North America through the Association of American Railroads by the National Motor Traffic Freight Association in the United States and Mexico and by the National Transportation Agency in Canada.

The following examination of the eight stations served by both CN and DMIR demonstrates that there will be no reduction in the vigor of horizontal competition as a result of the CN/GLT Transaction.

South Itasca. – South Itasca is the southernmost point on DMIR’s rail system. CN reaches South Itasca from the south over the lines of its WC subsidiary, and from the north by means of its DWP subsidiary’s trackage rights over DMIR. Neither CN nor DMIR serves any shipper facilities at South Itasca, so the CN/GLT transaction would not reduce competitive options for any shipper at that location.

Ambridge. – Koppers Inc., a producer of treated and untreated railroad ties, is the only shipper located at Ambridge that is served by both CN and DMIR. BNSF and DMIR both own tracks permitting them to serve the Koppers facility directly. Before 2001, WC also had direct access to Koppers, by means of a crossing diamond that DMIR maintained at its own expense. In 2001, after CN acquired WC, DMIR requested and CN agreed that DMIR be permitted to remove the diamond, and since that time CN has provided service to Koppers by means of switching by DMIR, for a fee of \$50 per car. CP and UP have access to Koppers through switching provided by BNSF, CN, or DMIR.¹⁰

Koppers may therefore arguably be regarded as either a “3-to-2” facility (if CN’s access by switching is regarded as comparable to direct access by BNSF and DMIR) or as a “5-to-4” facility (if CP’s and UP’s switching access is regarded as comparable to CN’s). Even if Koppers is regarded as a 3-to-2 facility, however, as Dr. Christopher Velturo explains in his Verified Statement, there is no reason to expect two-railroad competition between BNSF and CN after the CN/GLT Transaction to be any less vigorous than three-railroad competition among BNSF, CN, and DMIR today.

Saunders. – CN can physically reach Saunders only by means of trackage rights over DMIR, but has no right to serve shippers there. The CN/GLT transaction would therefore have no effect on competition for rail service to and from that station.

Pokegama. – Pokegama is a CN yard located along DMIR’s track, and which CN can only reach by means of trackage rights over DMIR. CN uses Pokegama Yard to interchange traffic with other carriers, but it has no right to originate or

¹⁰ CN offers switching service in and out of Koppers, but because CN now has no direct access to that facility, it can only provide that service by employing DMIR as its agent, paying a switching fee to DMIR and collecting its own switching fee from the third railroad.

terminate freight there, other than material for CN's own use. There would therefore be no diminution of competition for service to and from Pokegama as a result of the CN/GLT Transaction.

Steeltown. – Steeltown, on DMIR, is where DMIR interchanges traffic with CN. DMIR serves one customer (ME International) at this location, but CN has no rights to serve that, or any other, shipper at Steeltown.

Duluth. – BNSF, CP, and DMIR serve Duluth over their own tracks. CN and UP do not have direct access to Duluth, but can only originate or terminate traffic at that station by means of switching service provided by BNSF, CP, or DMIR. Thus, if direct access is the relevant standard of access, then Duluth should be regarded as a 3-to-3 station, at which there would be no diminution of horizontal competition as a result of the GLT Transaction. It should be noted that all railroads in the Duluth/Superior area would have access to DMIR-served shippers in Duluth on terms at least as favorable as those giving CN access to those shippers today. Thus, if access by switching is deemed the appropriate standard, then Duluth must therefore be regarded as a 5-to-4 station, which would continue to enjoy multi-carrier competition following consummation of the Transaction.

Fairlane. – There are no shippers currently originating or terminating traffic at Fairlane. As noted above, EVTAC formerly operated a taconite pellet plant at Fairlane, but that facility was closed in May 2003. Because DMIR was the only railroad with physical access to the unloading track (for raw iron ore brought to the plant from Thunderbird mine) or to the loading track (for taconite pellets being transported from the facility), the plant was a 1-to-1 plant for iron ore. On the other hand, both CN and DMIR transported non-iron ore traffic to and from another location at the plant, which therefore was a 2-to-1 facility for general freight. Because, however, the facility is now closed, it is properly characterized as a "0-to-0" facility, since it receives no railroad service from any carrier at present, and would not receive any after the Transaction, which would therefore have no effect on competition at that location.

Nevertheless, should the Fairlane plant be reopened and require rail service, CN is committed to providing competitive access to a second railroad for transportation of general (*i.e.*, non-iron-ore) freight to and from that facility, so as to replicate the competitive situation that existed before the EVTAC closing.¹¹ Thus,

¹¹ BNSF has a line that connects with DMIR at Emmert, 17 miles from Fairlane. CP and UP have lines in the Duluth/Superior area, between 64 and 69 miles away from the facility. In addition, Minnesota, Dakota & Western Railway Company ("MDW") presently has overhead trackage rights over the CN line serving Fairlane; those rights permit MDW to operate over the 163 miles of CN track between International Falls, MN, and Saunders, WI, where MDW interchanges with all carriers serving the Duluth/Superior area. CN could provide two-railroad

regardless of whether the EVTAC plant remains closed or reopens, the CN/GLT Transaction would not reduce competition for rail service at that location.

Virginia. – There are no shipper facilities at Virginia that are served by both CN and DMIR.

2. Competition through Transloading

There are some CN and DMIR customers, located in Virginia or in the Duluth/Superior area, who receive freight (such as dust control agents, ammonium nitrate, and mineral oil) by rail, which they transload to truck for delivery, or who carry freight (such as used rail, metal scrap, and boulders used in landscaping) by truck to locations on the railroad, where it is loaded onto trains for delivery. In these instances, it might be suggested that, because transloading is not dependent on a particular shipper facility located on an individual railroad, the customer presently has the option of transloading on or from either CN or DMIR, and that the CN/GLT Transaction would therefore reduce the competitive options available to those shippers.

To the extent, however, that shippers have a choice of transloading to or from CN and DMIR, they also have a choice of transloading to or from any of the other railroads (BNSF, CP, and UP) serving the region. BNSF's lines come within 25 miles of Virginia by rail, or 20

competition for general freight by granting trackage rights allowing one of these carriers to serve EVTAC, or, if traffic volumes were too low to justify the railroad operating its own trains and crews, by providing haulage service or switching at a rate that would not disadvantage the other railroad, as compared to the cost to CN itself for providing service with its own trains, crews, and tracks.

CN would expect to negotiate the terms of such access through a voluntary agreement with a competing railroad, but it is possible that the parties might be unable to agree on such terms. CN would therefore consent to the Board's retaining jurisdiction over the proposed Transaction after a final decision approving the Application, for the limited purpose of imposing an appropriate condition giving competitive access in case EVTAC should again require rail service, and the parties should be unable to agree on appropriate terms.

miles by road, well within trucking distance. Similarly, BNSF, CP, and UP all serve the Duluth/Superior area. It is my judgment that, to the extent that CN and DMIR compete by means of transloading, the other railroads in the area could provide similar competition, relying on existing facilities (such as warehouses in the Duluth area), or by establishing specialized transloading facilities, if needed, to handle the relevant commodities, which could be done at a reasonable price that would not disadvantage those railroads in competition with CN.

The economic feasibility of rail-truck transloading is underscored by the fact that in recent years the City of Virginia's Department of Public Utilities has received substantial amounts of coal by truck from Superior for consumption at its cogeneration plant in Virginia. Since bulk commodities such as coal are generally the ones least amenable to truck transportation, this practice suggests that truck transportation to or from BNSF, CP, or UP is available as a competitive alternative in every case where it is arguable that CN and DMIR compete by means of transloading options.

3. Build-in/Build-out Opportunities

CN is aware of only one instance where it is even arguable that the CN/GLT Transaction could eliminate a feasible build-in or build-out possibility, and thus reduce competitive restraint resulting from that possibility. That instance involves the EVTAC taconite plant at Fairlane, where, it might be argued, CN could feasibly build in to the plant to handle its iron ore business, or EVTAC itself (or any successor to EVTAC as owner of the plant) could build out to CN's line to obtain competitive CN iron ore service, if the plant were reopened. It is, of course, open to question whether such a build-in/build-out option was or is in fact feasible or whether its possibility materially constrained DMIR's rates and service. Nevertheless, should the Fairlane plant reopen, CN is committed to providing competitive access to a second carrier,

replicating whatever build-in or build-out opportunities are now available at the plant for iron ore traffic. This access would take the form of trackage rights, over CN's present line to a point near the Fairlane plant from which the competing railroad could build a competing rail line into the facility, or to which EVTAC (or its successor) could build out a rail line providing it with competitive iron ore service.¹²

As in the case of access to EVTAC for general freight, CN would expect to negotiate the terms of trackage rights to a build-in/build-out point through a voluntary agreement with the competing carrier. As in that case, if the parties were unable to agree to terms of access (including compensation), CN would consent to the Board's reopening this proceeding for the purpose of imposing a condition, comparable to conditions imposed in *BN/Santa Fe*, *UP/SP*, and other recent control cases, prescribing trackage rights to a build-in/build-out point and prescribing appropriate terms and conditions, including compensation terms, for those trackage rights.

4. Captive Short Lines

There are no short lines that, as a result of the CN/GLT Transaction, would lose an independent outlet to a Class I railroad.

¹² Because CN's trackage rights agreement with DMIR prohibits CN from transporting iron ore (including taconite pellets) over the DMIR line between Nopeming Junction and South Itasca, CN should not be required to permit use of that DMIR line for transportation of iron ore, except on commercial terms. Similarly, because CN does not have access to an ore dock of its own in the Duluth/Superior area, the railroad receiving trackage rights to a build-in/build-out point should not be one that presently owns such a dock. This is consistent with the Board's position in past control cases that conditions imposed to replicate pre-merger competitive relations are not intended to put parties in a *better* position than they were before the merger. *E.g., Burlington N. Inc. – Control & Merger – Santa Fe Pac. Corp.*, 10 I.C.C.2d 661, 745 (1995) (“the conditioning power is used to *preserve* competitive options (not to *expand* them)”).

B. Geographic Competition

I have also assessed the impact of the proposed Transaction on geographic competition, which can take two forms. One is “source competition,” by which I mean the competition among sources of a particular commodity that can arise when different rail or motor carriers transport the same product to the same destination but from different geographic origins. The second is “destination competition,” which can arise when different carriers transport the same product to different destinations from the same origin. (Together, I will refer to both forms of competition as “geographic competition.”)

My work in conducting this analysis required two steps. First, based on my knowledge of CN’s business and my expertise as a career-long railroad marketing executive, I examined information provided by GLT about its principal lines of business to determine whether any obvious potential issues of geographic competition arose from the traffic flows that account for the bulk of GLT’s business. Second, as a check to ensure that I had not overlooked any other traffic flows for which geographic competition might be a factor, I examined the results of a screen of potential traffic conducted by ALK Technologies, Inc. (“ALK”), using the same methodology as the similar screen employed to assess effects on geographic competition resulting from the CN/WC transaction.¹³

GLT today handles only a very small, easily identified set of traffic flows, primarily involving taconite from pellet plants in northeastern Minnesota, limestone and other materials used by those plants, and iron ore, coal, limestone, and finished steel handled on B&LE and P&C Dock. Together, these flows account for about 95% of all carloads handled by

¹³ See 1 *CN/WC Application* 183-87 (Verified Statement of Richard L. Bottorff), 238-46, 265-68 (Verified Statement of Christopher A. Velturo).

the GLT Railroads. It is therefore relatively easy to examine those flows to identify potential issues of geographic competition. Only one of those flows – taconite pellets consumed at Ispat Inland Steel's Indiana Harbor steel mill – appeared on examination to warrant further investigation. In the Verified Statement of Christopher A. Vellturo (which is also being submitted as part of the Application), Dr. Vellturo examines the issue of competition for transportation of taconite to Indiana Harbor and concludes that Ispat Inland Steel would not suffer from any reduction in such source competition as a result of the CN/GLT Transaction.

While my examination of the relevant traffic flows did not identify any other potential issues of geographic competition, I cross-checked my conclusions by examining the results of a "50/10 screen" conducted by ALK according to specifications developed by Dr. Vellturo. As Dr. Vellturo explains, this screen, which applied the same methodology as was used in the CN/WC merger application to flag potential issues of geographic competition, used the Board's Waybill Sample to identify product/destination pairs in which CN and GLT originate, terminate, or otherwise handle a significant portion of the traffic moving into a relevant geographic region. The Business Economic Area ("BEA") was chosen as the geographic unit of analysis,¹⁴ and products were evaluated at the 7-digit STCC level.¹⁵ ALK searched the waybill sample for all instances in which each of CN and GLT in 2001 (the last year for which waybill data is available) (1) originated, terminated, or interchanged 10% or more

¹⁴ The U.S. Department of Commerce has divided the United States into 172 BEAs, each of which typically contains a major economic center and the surrounding counties.

¹⁵ The Standard Transportation Commodity Code ("STCC") system is seven-digit coding structure designed to classify all commodities moving in surface freight transportation. The first two digits of a code ("STCC-2") refer to one of 38 categories into which all commodities are classified, and the entire seven-digit code ("STCC-7") identifies the specific commodity.

of the total carloads of a commodity delivered to a particular BEA, if the combined share calculated on this basis without double-counting the CN or GLT volumes would have been 50% or more of total delivered volume, or (2) originated 10% or more of the total carloads of a commodity delivered to a BEA, if the combined originated share of the two railroads would have been 50% or more, or (3) terminated 10% or more of the total carloads of a commodity delivered to a BEA, if the combined terminated share of the two railroads would have been 50% or more.

This screen identified no traffic flows that met these criteria and thus warranted further investigation. This conclusion was entirely consistent with my expectations.

Finally, to confirm that I had not overlooked any potential destination competition between CN and GLT, I examined the results of a 50/10 screen conducted by ALK to identify flows of commodities from an origin to alternative destinations served by CN and GLT, where the originating shipper has access to both CN and GLT and has a choice of destinations, which choice is potentially affected by competition between the railroads. This screen searched for all instances in which CN and GLT in 2001 (1) originated 10% or more of the total carloads of a commodity originating in a particular BEA, if the combined originated share of the two rail systems would have been 50% or more of total originated volume. Because the only BEA where CN and DMIR might both originate any particular commodity is the Duluth-Superior, MN-WI BEA (BEA 109), I was not surprised that this screen, like the source competition screen, identified no traffic flows raising potential issues of geographic competition.

C. Vertical Competitive Effects

It is sometimes alleged that competition may be adversely affected by a rail combination through “vertical effects” that occur when a railroad that has market power in one geographic market merges with a connecting railroad and, as a result of the merger, extends its

market power to the connecting railroad's territory, closing gateways and thus foreclosing other connecting railroads from participating in movements to or from the first railroad's service area. I understand, however, that vertical effects of this kind are unlikely as a matter of economic theory and that the Board has not been persuaded in recent control transactions that such effects actually do or are likely to occur.

In any event, CN will not engage in such foreclosure following consummation of the CN/GLT Transaction, but will keep all existing active gateways affected by the Transaction open on commercially reasonable terms. In addition, CN will waive any defenses it might otherwise have as a result of the Transaction, under the Board's general policy that it does not separately regulate bottleneck rates, in circumstances where a shipper prior to the Transaction would have been entitled to regulation of a bottleneck rate under the Board's "contract exception" to the general rule. I therefore can assure the Board and the shipping public that the Transaction will have no harmful vertical effects on competition.

III. CONCLUSION

The CN/GLT Transaction will ensure the long-run ability of shippers served by the GLT Railroads to receive high-quality service supported by necessary capital investments, while ensuring CN ownership of the entire route used for its traffic between western Canada and Chicago. Where CN and GLT have parallel lines, the Transaction would permit CN to use both lines to optimize their operations, such as by instituting directional running, to provide further benefits to the customers of both systems.

None of these benefits will come at the cost of impaired competition. There are no 2-to-1 customers anywhere on the two systems, and only one arguable 3-to-2 customer

(which nonetheless will not face a reduction of competition after consummation of the CN/GLT Transaction). Moreover, if restoration of operations at EVTAC's plant at Fairlane should make that facility a 2-to-1 customer, CN is committed to providing a remedy that will restore equivalent two-railroad competition there. And, there are no instances in which geographic competition would be impaired and no prospect of vertical foreclosure. In short, there would be substantial benefits to shippers, and no adverse effects on horizontal or geographic competition for rail transportation service, as a result of the Transaction.

VERIFICATION

I, Gerald P. Radloff, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 1, 2003


Gerald P. Radloff

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BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 34424

Canadian National Railway Company
and Grand Trunk Corporation

--- CONTROL ---

Duluth, Missabe and Iron Range Railway Company,
Bessemer and Lake Erie Railroad Company,
and The Pittsburgh & Conneaut Dock Company

**VERIFIED STATEMENT
OF
CHRISTOPHER A. VELLTURO, PH.D.**

I. Qualifications

I am the founder and president of Quantitative Economic Solutions, LLC, a microeconomic consulting firm located in Cambridge, Massachusetts. I received a Bachelor of Science degree (*cum laude*) in applied mathematics and economics from Brown University in Providence, Rhode Island, and a Doctor of Philosophy (Ph.D.) degree in economics from the Massachusetts Institute of Technology (MIT) in Cambridge. While at MIT, I specialized in industrial organization and econometrics. During my tenure at MIT, I was awarded Bradley Fellowships in public economics (which is the study of how public policy decisions affect private sector incentives), and I have completed extensive training in that field. My Ph.D. thesis on the structural changes in the U.S. rail industry fostered by the passage of the Staggers Act, and their economic significance, was prepared under the guidance of Professor Ann Friedlaender, a leading expert in rail regulatory reform. My thesis and its progeny have been featured

significantly in previous assessments of the competitive effects associated with rail industry consolidation.¹ I am called upon frequently to referee scholarly articles pertaining to the U.S. rail industry that are submitted to a number of the leading applied microeconomics journals.

I have studied structural, regulatory, and competitive issues relating to the rail industry for 20 years. I have published several papers in academic journals relating to regulatory and competitive determinants of rail efficiency and viability. This body of research focused significantly (though not exclusively) on rail consolidation and rail regulatory reform. I continue to conduct research on transportation issues generally, and rail issues in particular. I assessed structural and competitive issues relating to the assimilation of Conrail into CSX and Norfolk Southern, and the acquisitions by Canadian National Railway Company ("CN") of the Illinois Central Railroad Company and its affiliates, and, subsequently, Wisconsin Central Ltd. and its affiliates, all before the Surface Transportation Board ("STB"). I presented testimony before the Board during the ANPR phase of the Board's rulemaking on Major Rail Consolidation Procedures.

I have extensive antitrust expertise and experience with respect, in particular, to the competitive ramifications of mergers and acquisitions. In the past seven years, I have conducted competitive analyses for over 120 proposed transactions. This work has

¹"Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et. al.*) in *Productivity Issues in Services at the Micro Level*, ed. Zvi Griliches and Jacques Mairesse, Kluwer Academic Publishers, 1993; "Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et. al.*), *Journal of Productivity Analysis*, 4, 127-144, 1993; "Rail Costs and Capital Adjustments in a Quasi-Regulated Environment" (with Friedlaender, *et. al.*), *Journal of Transport Economics and Policy*, 131-152, May 1993; "Deregulation, Mergers and Cost Savings in Class I U.S. Railroads, 1974-1986" (with Berndt, *et. al.*), *Journal of Economics and Management Strategy*, Vol. 1, No. 2, 1992.

spanned a broad array of industries, including: automobile manufacturing, grains and agricultural products, sugar, salt, fertilizers, chemicals, forestry products, machine tools, municipal waste, retail distribution, rail bed service equipment, petroleum and petroleum products, plastics, medical products and services, software, electronic funds transfer networks, lime, cement, computer and electronics manufacturing, and many others. In addition to the Board, I have presented my work before the United States Department of Justice (Antitrust Division), the Federal Trade Commission, the European Commission, the Canadian Competition Bureau, the Federal Reserve, and various state Attorneys General. My curriculum vitae is provided as Attachment 1.

II. Assignment and Conclusions

I have been asked by CN to address the competitive ramifications of its proposed acquisition of the freight railroad assets of Great Lakes Transportation Corp. ("GLT"). More specifically, I have been asked to evaluate whether there exists any identifiable set of customers -- either traffic originators ("shippers") or recipients of products transported by rail ("receivers") -- who would face higher prices or reduced service levels as a result of a reduction in competition in the provision of rail services by CN and the rail assets of GLT.² I find that there will be no reduction in competition for any rail traffic as a result of the proposed transaction.

I examined the possibility for competitive interactions between CN and the GLT

² By rail assets of GLT, I refer to the rail lines currently owned by GLT that are referred to in the application as DMIR, B&LE and P&C Dock. CN is also acquiring GLF Holdings Corp., which in turn owns 100% of the stock of Great Lakes Fleet, Inc. ("GLF"). GLF owns and operates a fleet of vessels carrying ore and other commodities on the Great Lakes.

rail assets. The first element of my analysis considered whether shippers exist that are currently served by both railroads, and situations where the proposed transaction would reduce the number of rail options for such shippers from 2-to-1 or from 3-to-2. A review of a map of North American rail freight routes and their ownership structure clearly indicates that the proposed acquisition represents a combination that poses no threat to rail competition. I understand that Mr. Gerald Radloff has conducted a study of the Official Railroad Station List and additional other industry information, and has determined that there is no shipper that will see its rail options reduced from 2-to-1 and a single shipper, Koppers, Inc. at Ambridge, MN, who will see its rail options reduced from 3-to-2 as a result of the proposed transaction. Because this shipper will have access to at least two viable rail alternatives, no further competitive consideration is required.³ Given the absence of any significant competitive overlap, no economic analysis is necessary to conclude that the proposed transaction has no competitive effects, and I do not discuss any overlap shipper locations further.⁴

³ The commodity involved is treated and untreated rail ties. As described by Mr. Radloff, BNSF and DMIR both own tracks permitting them to serve the shipper directly. CN's access is by switching over DMIR. Mr. Radloff notes that this is a 5-to-4 facility if CP's and UP's switching access is regarded as comparable to CN's. If the CP and UP access is not comparable, this would be a 3-to-2 facility. The STB has historically examined 3-to-2 situations on a case-by-case basis, and generally has not required any remedial action. The STB, and before it the ICC, have long recognized the intense intramodal competition that is typical when two railroads serve a common location or corridor. Three-to-two changes do not even presumptively merit remedial action, but merger applicants routinely identify them so that parties with specific concerns may address them through case-specific analysis.

⁴ I understand that DMIR and CN represent the sole rail service providers into and out of Fairlane, Minnesota. The only significant shipper/receiver of rail traffic at Fairlane historically was Eveleth Mines, Inc., doing business as EVTAC Mining ("EVTAC"), which owns and operated a plant at that location that processed raw iron ore into taconite pellets. DMIR historically transported taconite pellets from EVTAC's Fairlane facility

Second, I considered the potential for a reduction in geographic competition between CN and GLT. Applicants asked that I examine geographic competition thoroughly, in order to provide the Board with a complete basis upon which to conclude that this Acquisition is “minor” under the Board’s regulations. Geographic competition arises when two railroads provide transportation of a specific good that either moves from a common point of origin served by the two railroads (“destination competition”) or is delivered to a common destination from alternate sources served by the two railroads (“source competition”). As to destination competition, I understand that there are no destination competitive overlaps associated with the proposed transaction, and I do not discuss destination competition further.

With respect to source competition, I sought to determine if there exists any product where the CN and GLT railroads both originate, terminate, or otherwise handle a significant portion of the product destined for a common terminating point. I applied the same “50/10” screen to identify such potential source based issues as I applied when CN acquired Wisconsin Central. I discussed the screen extensively in my Verified Statement in that matter.⁵ Specifically, I sought to identify product/destination pairs where each of the parties handled at least 10% of the traffic destined for a common point prior to the

(and was the only railroad equipped to handle such traffic), while DMIR and CN shipped and delivered non-iron ore products to the facility. It is my understanding that EVTAC’s pellet plant was closed down in May of 2003, and that no rail traffic is currently flowing to or from the facility. CN has represented to the Board through Mr. Radloff’s verified statement that, should operations restart at the Fairlane plant, CN would grant trackage rights to a second carrier that would provide access to the facility for non-iron ore traffic and would replicate whatever build-in or build-out opportunities are now available at this facility for iron ore traffic.

⁵ I provide a copy of my verified statement in the Wisconsin Central proceeding as Attachment 2.

transaction, and the combined share of handled traffic by the combined firm after the transaction would exceed 50%. Based on an analysis of Waybill statistics undertaken by Mr. Mark Hornung of ALK Technologies, Inc. at my direction, I understand that there are no product/destination pairs that satisfy the 50/10 screen, and thus none that poses any significant competitive concern from this standpoint.

Based upon the freight analysis of Mr. Radloff, however, I understand that there exists one significant instance in which a single destination receives the same products from more than one origin where CN and GLT each serve one of the origins. The commerce involves the shipment of taconite pellets over rail and water carrier to Indiana Harbor, IN, the location of a steel mill owned and operated by Ispat Inland Steel, Inc. This competition would not be identified through the method that I have described above, because the waybills show the lake ports as the rail destinations for CN and DMIR, and the movements in question go to different ports for further shipment by vessel to Ispat Inland at Indiana Harbor.⁶ (Rail waybills generally only show water movements when loaded rail cars are placed on a vessel, not when freight is unloaded in bulk from rail cars for water shipment, as in the case of taconite pellets.)

As I demonstrate below, the transaction will not result in a reduction in source competition for taconite pellets for delivery to the Ispat Inland mill at Indiana Harbor. My conclusion is based upon two key findings:

- The taconite volumes moving along DMIR provide no competitive

⁶ I understand from conversations with business people at DMIR and CN that the Indiana Harbor receipt of taconite pellets represents the only commercially significant product/destination pair that arises as a result of a consideration of rail-water freight movements.

constraint to the traffic handled by CN (which originates out of the Empire taconite mine near Palmer, Michigan); the Minorca facility, near Virginia, MN, is served by DMIR and is wholly owned by Ispat Inland; its output is fully dedicated to serving Ispat Inland's steel facility at Indiana Harbor. Thus, there are no incremental taconite pellet volumes available from the Minorca mine that would serve as a competitive alternative to the shipments carried by CN.

- Burlington Northern Santa Fe ("BNSF") has competitive trackage rights into and out of the taconite mine served by DMIR and provides an alternative rail freight option (via its dock at Superior, Wisconsin) to Indiana Harbor; indeed, BNSF provides the principal pricing constraint to DMIR for the taconite shipments at issue in my analysis.⁷

I conclude that the transaction will result in no reduction in source competition in taconite pellets to Indiana Harbor, as the sources served by CN and DMIR do not represent a competitive alternative to one another, nor will they in the foreseeable future. I provide additional details on my competitive analysis of source competition below.

⁷ During the winter months, when the locks at Sault Ste. Marie, MI, are closed and Lake Superior is inaccessible, CN provides partial rail service for some limited volumes of taconite leaving the Minorca mine, which move to CN's dock at Escanaba, MI. With respect to these moves, the competitive alternatives available to Ispat Inland and the pricing of such alternatives will remain unchanged after the transaction. Thus, the transaction can pose no anti-competitive concern with respect to these moves. I perform a competitive analysis with respect to these moves in this report as well.

III. Analysis of the Competitive Implication of the Proposed Transaction on the Shipment of Taconite Pellets into Indiana Harbor, IN

a. Overview

DMIR provides rail service to Ispat Inland's taconite pellet plant at the Minorca mine, near Virginia, MN. The Minorca mine produces the majority of the taconite consumed by blast furnace No. 7 at Ispat Inland's steel mill at Indiana Harbor, IN.⁸ Ispat Inland's Indiana Harbor mill represents the only destination for taconite pellets produced at Minorca. These pellet shipments originate from Minorca and are initially moved on DMIR track; the shipments are transported by rail to a dock operated by DMIR at Two Harbors, MN, where the taconite pellets are loaded on water carriers (not GLF) for the remainder of the journey to Indiana Harbor, IN. During winter months when Lake Superior is inaccessible to water carriers, taconite from Minorca moves over DMIR track to Steelton MN, where it is interchanged with CN; CN then carries the taconite to its ore dock at Escanaba, MI where the taconite is loaded onto water carriers (again, not GLF) for delivery down Lake Michigan to Indiana Harbor, IN.

Based on a review of available documentation and discussions with relevant DMIR personnel, I understand that DMIR has provided originating rail service to Ispat Inland at the Minorca mine since the mine opened in 1978. Taconite pellets have moved from Minorca to Indiana Harbor under a series of long-term contracts that have run approximately 7-8 years each. As noted above, during the winter months in certain

⁸ Throughout this report, I rely upon taconite production, shipment, and consumption information gathered at my request by Metal Strategies Inc. ("MSI"), a consulting firm specializing in the metallurgical markets. I consider MSI's work to be suitable for me to rely on in developing economic analysis, based on MSI's extensive experience in and knowledge of the relevant industries, the fact that their work was in response to my specific requests, and my detailed discussions with MSI.

years, a portion of the Minorca pellets are interchanged by DMIR and carried by CN to its Escanaba dock facility for final transportation via water to Indiana Harbor. These movements are governed by a contract between CN and Ispat Inland. These so-called “winter moves” are relatively modest and vary by year, depending on ice conditions on Lake Michigan. I understand that in the winter of 2002 CN handled approximately 490,000 tons of taconite through these winter moves,⁹ and approximately 270,000 tons in the winter of 2003.

Essentially all of Ispat Inland’s taconite pellet requirements at Indiana Harbor originate at either the Minorca or Empire mines.¹⁰

Virtually all of the pellets produced at Minorca (approximately 2.8 million tons in 2003) are flux pellets,¹¹ and are used to charge Ispat Inland’s state-of-the-art No. 7 blast furnace at Indiana Harbor.¹² The Minorca pellets are also low-silica pellets, and I understand that the No. 7 furnace is optimized to run on the low-silica flux pellets that Minorca provides.

The Ispat Inland mill at Indiana Harbor also receives taconite pellets

⁹ All references are to gross (long) tons, which are 2,240 pounds.

¹⁰ Ispat Inland generally receives a small amount of manganese pellets from the Wabush, Quebec plant (not more than half a million tons in a year).

¹¹ Flux pellets include limestone and dolomite added to iron ore concentrate prior to kiln firing so that the ratio of these elements in the pellet analysis to silica content is at least 0.8. Standard (acid) pellets are typical non-flux pellets, whereas sinter pellets include iron ore fines and other iron-bearing materials plus fluxstones prepared at mill site and indurated into a cake like-charge material for blast furnaces.

¹² A very limited amount of standard or acid pellets are shipped from Minorca for use in the No. 5 and No. 6 blast furnaces at Indiana Harbor (less than 35,000 tons per year into each furnace). These shipments comprise less than 5% of the total output at Minorca.

produced at the Empire mine, located near Palmer, Michigan. The Empire mine at present is 21% owned by Ispat Inland with the remaining 79% owned by Cleveland Cliffs, Inc. CN moves taconite pellets originating at the Empire mine that are destined for Indiana Harbor to CN's ore dock at Escanaba, MI, where the pellets are transferred to water carriers (not GLF) for delivery to Indiana Harbor.

As a result of a 12-year exclusive supply contract entered into with Cleveland Cliffs in 2002, Ispat Inland must source from Cleveland Cliffs' mines all of its pellets that are in excess of production from Minorca and the 21% of Empire's production that Ispat Inland owns. At present, Cleveland Cliffs produces taconite pellets at its Empire (MI), Wabush (QC), Northshore (MN), Hibbing (MN), and Tilden (MI) plants. For the foreseeable future, all taconite requirements at Indiana Harbor other than those served by Minorca or Ispat Inland's 21% share at Empire must originate from a Cleveland Cliffs' operation (which can include production from Cleveland Cliffs' 79% share of Empire).

At present, the Ispat Inland facility at Indiana Harbor receives approximately 3.0 million tons of taconite pellets annually from the Empire mine. Approximately 1.9 million tons are "Royal" brand¹³ flux pellets used to charge the No. 5 and No. 6 blast furnaces at Indiana Harbor. An additional 650,000 tons of standard, or acid, pellets sourced from Empire are consumed in the No 5 and No. 6 furnaces. Finally, about 800,000 tons of "Viceroy" fluxed pellets¹⁴ sourced from Empire are consumed in the No. 7 furnace at Indiana Harbor. All of the taconite pellets provided from the Empire

¹³ Royal brand flux pellets have a limestone and dolomite ratio to silica of 1.17.

¹⁴ Viceroy fluxed pellets have a limestone and dolomite ratio to silica of 1.37.

mine exhibit significantly higher silica levels than the pellets sourced from Minorca. The movement of taconite pellets from the Empire mine to CN's ore loading dock at Escanaba, MI is governed by a contract between CN and Cleveland Cliffs.

b. Framework of Economic Analysis

I perform an economic analysis to determine whether the transportation services offered by DMIR for the taconite pellets sourced by Ispat Inland from Minorca and the transportation services offered by CN for the taconite pellets sourced by Ispat Inland from Empire represent meaningful economic substitutes. As to meaningful economic substitutes, I consider whether the ability of Ispat Inland to shift its sourcing of taconite pellets from Minorca to Empire represents a meaningful constraint on the prices DMIR charges for delivery services from Minorca. Similarly, I consider whether the ability of Ispat Inland to shift its sourcing of taconite pellets from Empire to Minorca represents a meaningful constraint on the prices CN charges for delivery services from Empire. If neither source/delivery service represents a meaningful constraint on the pricing decision of the other, then the proposed combination of the rail operations of CN and GLT will not result in a reduction in rivalry among rail service providers of taconite to Indiana Harbor, and no anti-competitive concerns will arise. I conclude that no such constraints exist, and therefore, the proposed transaction generates no anti-competitive concern. At the end of this section, I also evaluate the relatively minor "winter moves" and determine that no anti-competitive effects will arise as a result of the proposed transaction.

c. Economic Analysis of Competitive Overlap

While CN and DMIR both handle taconite pellets destined for the Ispat Inland steel mill at Indiana Harbor, there is no “source competition” between the two traffic flows.

1. Taconite shipments out of Minorca on DMIR do not serve as a competitive alternative to taconite shipments out of Empire on CN

The potential for Ispat Inland to source additional taconite pellets from Minorca (using DMIR) does not serve as a competitive alternative to shipments received by Ispat Inland from the Empire mine over CN. The Minorca mine, already delivering all of its output into Indiana Harbor, operates at full capacity and, therefore, cannot produce additional volume to replace any diverted pellet shipments from the Empire mine. Thus, in the context of the economic framework outlined above, the potential for Ispat Inland to divert any taconite demand it has at Indiana Harbor from the Empire mine to additional shipments from Minorca is not realistic and cannot serve as a constraint on CN’s prices for the transportation of taconite from Empire.

2. Taconite shipments out of Empire on CN do not serve as a competitive alternative to taconite shipments out of Minorca on DMIR

Nor do taconite shipments from the Empire mine on CN represent a meaningful competitive alternative to taconite volumes shipped to Indiana Harbor over DMIR from Minorca. First, the Minorca mine is wholly owned by Ispat Inland and all of its output is earmarked for the Indiana Harbor facility; thus, the volume of taconite shipments will not shift to Empire based upon changes in transportation prices from

Minorca to Indiana Harbor.

Second, the flux pellets at Empire do not provide an effective alternative to the specialized flux pellets that form the bulk of the taconite shipments from Minorca to Indiana Harbor, particularly the pellets destined for the No. 7 blast furnace.

Specifically, I understand that the high silica content of the taconite produced at Empire would render such pellets unsuitable for use as a reasonable substitute for the flux pellets sourced from Minorca. I also understand that the use of Empire pellets as a replacement would require a significant rework of the operating practices of the No. 7 furnace, and would result in a material diminution in its effective yield.

Third, it is evident that Ispat Inland's predecessor (Inland Steel), to avoid significant limitations for rail shipment options out of Minorca and into Indiana Harbor at the time it opened the Minorca mine in 1978, took steps to assure that another major freight railroad would have access to the Minorca mine over the DMIR road as a pre-condition to opening the mine. Indeed, BNSF has full and competitive trackage rights to the Minorca mine over DMIR and CN tracks.¹⁵

¹⁵ Economists have studied the propensity of firms to seek protection, *ex ante*, from potential opportunism when they undertake large-scale investments dependent on third party transportation services, such as the investment undertaken by Ispat Inland here. (See Joskow, "Contract Duration and Relationship Specific Investments: Empirical Evidence from Coal Markets," *American Economic Review*, March 1987 (Reprinted in *Transaction Cost Economics*, O.W. Williamson and S.E. Masten, editors, Elgar Publishing 1995 (hardcover); and 1999 paperback. Reprinted in *Case Studies in Contracting and Organization*, Scott Masten, editor, Oxford University Press, 1996)). Firms commonly rely upon second sourcing options (e.g., trackage rights) or very long term contracts with specific pricing/service provisions, to reduce their exposure to opportunistic behavior, *ex post*. Ispat Inland's contractual arrangements are a good example of this type of self-protection by a firm contemplating a large, sunk investment that is dependent on rail transportation.

Over the years, BNSF has utilized these rights to ship products other than taconite into Minorca (thus competing effectively with DMIR over these tracks), and has bid on the taconite business to Indiana Harbor when the contract for such movements with DMIR has come up for bid. It is my understanding from DMIR that BNSF's bid provides the effective constraint on DMIR's pricing of taconite movements out of Minorca.

Finally, BNSF is also the effective constraint on CN's pricing of the limited "winter moves" of taconite from Minorca to Indiana Harbor via CN's dock at Escanaba, MI. As an alternative to executing such winter moves through the CN facility at Escanaba, Ispat Inland has accelerated shipments during non-winter months through its existing transportation agreement with DMIR, and stored taconite at its steel mill at Indiana Harbor for winter use, or has increased its shipments over DMIR during winter months and stored the taconite at DMIR's facilities at Two Harbors or Duluth. The pricing of these alternatives over DMIR will not change as a result of the transaction (due primarily to the presence of BNSF as an alternative carrier, as detailed above), so that the constraint such alternatives place on the pricing of winter moves by CN will not change, either. Thus, the alternatives Ispat Inland has to the winter moves over CN will not change as a result of the proposed transaction.

IV. Summary

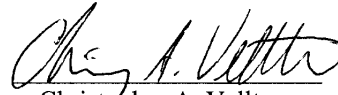
An extensive review of the route structures and traffic flows of CN and the freight rail systems owned and operated by GLT yields only a single shipper overlap – Koppers at Ambridge, MN – and one additional instance of significant shipment overlap – the shipment of taconite pellets into Indiana Harbor, IN. I find that

competition at Ambridge will not be significantly reduced, as two railroads will continue to serve this traffic after the proposed transaction. Furthermore, I find that DMIR and CN do not effectively compete to source taconite to Indiana Harbor. From an economic standpoint, taconite shipments originating on DMIR do not serve as an effective pricing constraint on taconite shipments originating on CN. Likewise, taconite shipments originating on CN do not serve as an effective pricing constraint to DMIR. Therefore, CN's proposed acquisition of GLT's rail freight assets poses no anti-competitive concern.

VERIFICATION

I, Christopher A. Vellturo, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 1, 2003


Christopher A. Vellturo

ATTACHMENT 1



quantitative economic solutions, LLC
Microeconomic Consultants

1280 Massachusetts Ave.
Cambridge, MA 02138

t: 617.995.7676
f: 617.995.7677

CHRISTOPHER A. VELLTURO
President

In the course of his career, Dr. Vellturo has performed extensive economic analyses and provided expert testimony in the context of mergers and acquisitions, antitrust litigation, intellectual property litigation and numerous other matters spanning a broad array of industries. He is recognized by legal industry journals as one of the top fifty antitrust economists worldwide and has appeared repeatedly before the U.S. Department of Justice, the Federal Trade Commission, various states' Attorneys General offices, the Federal Reserve Bank Board of Governors, and numerous other regulatory agencies on merger-related issues. Dr. Vellturo has also made appearances at hearings before the European Commission and testified at the Canadian Competition Bureau, the U.S. District Court and the American Arbitration Association. To date, he has performed economic analyses in over one hundred mergers and acquisitions and relating to litigation matters, an excess of fifty antitrust and one hundred intellectual property actions.

Prior to forming Quantitative Economic Solutions, LLC (QES), Dr. Vellturo was a Principal at Analysis Group/Economics (AG/E) and a Senior Vice President and member of the Board of Directors at National Economic Research Associates (NERA). He was also a founding director of Cambridge Economics, Inc., a microeconomic consulting firm recently acquired by Lexecon, Inc.

Dr. Vellturo has published on a variety of topics, including merger and acquisition-related efficiencies, price discrimination, differentiated product analysis and market definition. His research has appeared in leading academic journals, including *Antitrust*, the *Antitrust Law Journal*, and the *Journal of Economics and Management Strategy*. Dr. Vellturo is a recipient of the Bradley Fellowship in Public Economics and has served as a referee for *American Economic Review* and *Rand Journal of Economics*.

A Ph.D. graduate in Economics from the Massachusetts Institute of Technology, Dr. Velturo also holds a Sc.B. in Applied Mathematics and Economics from Brown University, where he graduated *magna cum laude* and *Phi Beta Kappa*.

EDUCATION

- 1989 Ph.D. in Economics, Massachusetts Institute of Technology
 Primary Fields: Econometrics, Industrial Organization
 Secondary Fields: Public Finance, Game Theory, Law and Economics
- 1983 Sc.B. in Applied Mathematics and Economics (*magna cum laude*), Brown University

PROFESSIONAL EXPERIENCE

- 2002-Present **Quantitative Economic Solutions, LLC**
 President/Manager – Direct research on microeconomic issues in litigation and non-litigation matters. Areas of particular focus include: antitrust, regulation, and damages assessment in intellectual property and contract matters.
- 2000-2002 **Analysis Group/Economics**
 Principal - Direct research and provide expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Expert reports and testimony presented in U.S. District Court. Presented antitrust economic analyses to Federal Trade Commission, U.S. Department of Justice, Federal Reserve Bank Board of Governors and the European Commission.
- 1996-2000 **National Economic Research Associates, Inc.**
 Senior Vice President (1999-00)
 Vice President (1996-99)
- 1991-1996 **Cambridge Economics, Inc.**
 Director - Directed research and provided expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Prior expert testimony provided in U.S. District Court and before the American Arbitration Association. Presented antitrust economic analyses to U.S. Department of Justice, Federal Trade Commission (Antitrust Division), state Attorneys General offices, and the Federal Reserve Bank Board of Governors.

- 1989-1991 **National Economic Research Associates, Inc.**
Senior Consultant - Directed and performed research relating to issues of antitrust, intellectual property, mergers and regulation.
- 1987 **Department of Economics, M.I.T.**
Teaching Assistant - Undergraduate econometrics.
- 1985-1989 **Dean Ann F. Friedlaender, M.I.T.**
Research Associate - Participated in research relating to transportation pricing and capital allocation responses to regulatory changes.
- 1983-1985 **National Economic Research Associates, Inc.**
Research Associate - Conducted research on a wide variety of issues including antitrust, railroad rate setting, optimal landfill pricing, and PCB and asbestos abatement strategies.

AWARDS AND PROFESSIONAL ACTIVITIES

- 1987-1989 Recipient, Bradley Fellowship in Public Economics
- 1986 M.I.T. Departmental Fellowship
- 1983 Phi Beta Kappa, Brown University
- 1983 Sigma Xi, Brown University
- Present Journal Referee for *American Economic Review* and *Rand Journal of Economics*
- PresentMember, American Economic Association

TESTIFYING HISTORY (PAST FOUR YEARS)

- *Milliken & Company v. Mohawk Industries, Inc., et al./ Shaw Industries Group, Inc., et al./ Interface, Inc., et al.*
U.S. District Court, District of South Carolina, Spartanburg Division, Civil Action Nos. 7-02-3631-20/7-02-3632-20/7-02-3633-2.
- *Torah Soft, Ltd. v. Michael Drosnin*
U.S. District Court, Southern District of New York, 2000 Civ.: 0676 (JCF).
- *Dresses for Less, Inc., DFL Management Inc., The DFL Apparel Group, an unincorporated association, Allison-Che' Fashions, Inc., Bicci Studio Ltd., Garden City Dresses for Less, Inc., Donald Weiner and Barbara Weiner, individually and derivatively as shareholder of Stella N. Bishop*

Fashion Corp., and I.S.B. Fashions Corp. v. CIT Group/Commercial Services, Inc. and The Uptown Credit Group, Inc.
U.S. District Court for the Southern District of New York, C.A. No. 01 CIV. 2669 (WHP).

- *Verizon California Inc., a California Corporation, v. Ronald A. Katz Technology Licensing, L.P., a California limited partnership*
U.S. District Court, Central District of California, Case No. 01 CV-09871 RGK (RCx).
- *First Citizens Bank and Trust Company of South Carolina, as Conservator for Alex Compton, a minor and Alex Reid Compton and Lisa Compton, in their individual capacity, as the natural parents of Alex Compton, a minor v. CSX Transportation Inc.*
U.S. District Court, District of South Carolina, Anderson Division, Civil Action File No. 8-01-4613-20.
- *DePuy AcroMed, Inc. and Biedermann Motech GMBH, Plaintiffs, v. Medtronic Sofamor Danek, Inc., f/k/a Sofamor Danek Group, Inc. and Medtronic Sofamor Danek, U.S.A. Inc.*
U.S. District Court, District of Massachusetts, Civil Action No. 01-CV-10165 (EFH).
- *Merck & Co., Inc. v. Teva Pharmaceuticals USA, Inc.*
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ATTACHMENT 2

**VERIFIED STATEMENT
OF
CHRISTOPHER A. VELLTURO, PH.D.**

**An Analysis of the Competitive Effects of the Proposed Combination of the
Canadian National and Wisconsin Central Railroads**

Before the Surface Transportation Board

April 2001

I. QUALIFICATIONS

I am a Principal of Analysis Group/Economics, Inc. I received a Bachelor of Science degree (*cum laude*) in applied mathematics and economics from Brown University in Providence, Rhode Island, and a Doctor of Philosophy (Ph.D.) degree in economics from the Massachusetts Institute of Technology (MIT) in Cambridge. While at MIT, I specialized in industrial organization and econometrics. During my tenure at MIT, I was awarded Bradley Fellowships in public economics (which is the study of how public policy decisions affect private sector incentives), and I have completed extensive training in that field. My Ph.D. thesis on the structural changes in the U.S. rail industry fostered by the passage of the Staggers Act, and their economic significance, was prepared under the guidance of Professor Ann Friedlaender, a visionary in rail regulatory reform. My thesis and its progeny have featured significantly in previous assessments of the competitive effects associated with rail industry consolidation.¹ I am called upon frequently to referee scholarly articles pertaining to the U.S. rail industry that are submitted to a number of the leading applied microeconomics journals.

I have studied structural, regulatory, and competitive issues relating to the rail industry for more than 15 years. I have published several papers in academic journals relating to regulatory and competitive determinants of rail efficiency and viability. This body of research focused significantly (though not exclusively) on rail consolidation and rail regulatory reform. I continue to conduct research on transportation issues generally, and rail issues in particular. I

¹"Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et. al.*) in *Productivity Issues in Services at the Micro Level*, ed. Zvi Griliches and Jacques Mairesse, Kluwer Academic Publishers, 1993; "Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et. al.*), *Journal of Productivity Analysis*, 4, 127-144, 1993; "Rail Costs and Capital Adjustments in a Quasi-Regulated Environment" (with Friedlaender, *et. al.*), *Journal of Transport Economics and Policy*, 131-152, May 1993; "Deregulation, Mergers and Cost Savings in Class I U.S. Railroads, 1974-1986" (with Berndt, *et. al.*), *Journal of Economics and Management Strategy*, Vol. 1, No. 2, 1992.

recently assessed structural and competitive issues relating to the assimilation of Conrail into CSX and Norfolk Southern, and relating to Canadian National's acquisition of the Illinois Central railroad, both before the Surface Transportation Board. I presented testimony before the Board during the ANPR phase of the Board's rulemaking on Major Rail Consolidation Procedures.

I have extensive antitrust expertise and experience with respect, in particular, to the competitive ramifications of mergers and acquisitions. In the past seven years, I have conducted competitive analyses for over 120 proposed transactions. This work has spanned a broad array of industries, including: automobile manufacturing, grains and agricultural products, sugar, salt, fertilizers, chemicals, forestry products, machine tools, municipal waste, retail distribution, rail bed service equipment, petroleum and petroleum products, plastics, medical products and services, software, electronic funds transfer networks, lime, cement, computer and electronics manufacturing, and many others. In addition to the Board, I have presented my work before the United States Department of Justice (Antitrust Division), the Federal Trade Commission, the European Commission, the Canadian Competition Bureau, the Federal Reserve, and various state Attorneys General. My curriculum vitae is attached.

II. ASSIGNMENT AND FINDINGS

I have been asked by the Applicants to assess the competitive ramifications of the proposed combination of CN² and Wisconsin Central Transportation Corporation ("WC").

²Because I am conducting competition analysis based on the 1999 Waybill Sample, my shorthand references to CN and WC are based on that year, and include, unless otherwise indicated, railroads that were within the two corporate families as well as short lines with no outlets except CN or WC. Accordingly, "CN" refers hereafter to Canadian National Ry. Co., Grand Trunk Corp. and Grand Trunk W. R.R. Inc., Illinois Cent. Corp. and Illinois Cent. R.R. Corp., Chicago Cent. & Pac. R.R. Co., Cedar River R.R. Co., Duluth Winnipeg and Pac. Ry., and, in addition, the sole-served short lines: Gloster S. R.R. Co., Mississippi and Skuna Valley R.R. Co., Tennken R.R. Co., and Old Augusta R.R. Co., Inc. Likewise, "WC" refers to Wisconsin Central Ltd., Algoma C. Ry. Inc., (continued...)

Specifically, I have been asked to evaluate whether there exists any identifiable set of customers – either traffic originators (“shippers”) or recipients of products transported by rail (“receivers”) – who would face higher prices or reduced service levels as a result of a meaningful reduction in rivalry in the provision of rail service by the two railroads. By “meaningful reduction,” I mean a reduction in competition that would enable the merged railroad to sustain a significant price increase profitably (or, the economic equivalent, to profitably sustain a significant reduction in service). Absent any meaningful reduction in rivalry, the proposed combination cannot produce competitive harm.³ I applied microeconomic and quantitative principles to these issues that I commonly utilize in analyzing the potential competitive harm resulting from mergers and acquisitions more generally.

To this end, I examined the possibilities for competitive interactions between CN and WC. The first element in such examination relates to shippers for whom the proposed Transaction would reduce the number of serving railroads from 2-to-1, or from 3-to-2. Even a cursory review of a North American rail route map clearly demonstrates the lack of commonly served points or parallel trackage between the CN and WC route systems. Mr. Richard Bottorff,⁴ relying on an extensive analysis of the Official Railroad Station List, relevant switching tariffs, the Official Railway Guide, the Official Railway Equipment Register, information published by individual railroads on their Web sites, and consultations with operating and marketing personnel

(...continued)

Fox Valley and W. Ltd., Sault Ste. Marie Bridge Co., and, in addition the sole-served short lines: Escanaba and Lake Superior R.R., Lake Superior and Ishpeming R.R. Co., and Toimahawk Ry. Ltd. Partnership.

³I also evaluated the potential for anticompetitive harm stemming from the end-to-end (or “vertical”) nature of the proposed Transaction. Consistent with the findings in all other rail merger investigations, I found no potential for competitive harm stemming from such vertical issues. See Section IV, *infra*.

⁴The information and analysis provided by Mr. Bottorff and to which I refer is contained in Verified Statement of Richard L. Bottorff.

familiar with the locations, has concluded that there are no points where the number of rail carriers serving customers would, as a result of the CN/WC Transaction, be reduced from two to one (i.e., there are no "2-to-1" shippers),⁵ or from three to two (i.e., there are no "3-to-2" shippers).⁶ In the Superior-Chicago corridor, where WC provides haulage for CN, the number of serving railroads would change from five to four, as Mr. Bottorff discusses. No further economic analysis is necessary, given these conclusions, and I do not discuss them further.

Second, I considered the potential for a reduction in geographic competition between CN and WC to harm customers. Applicants asked me to examine geographic competition thoroughly, in order to provide the Board with an ample basis on which to conclude that this Transaction is "minor" under the Board's regulations, and must be approved under the statutory standards. I principally discuss source competition, which can arise where two railroads each provide transportation of a specific good that moves to a common destination from different origins. In theory, receivers of a particular good in a particular location might rely on such source competition to obtain competitive prices. Accordingly, I performed a detailed analysis of

⁵One point in Canada - Oba, ON - is served by CN, WC, and no other rail carriers, so it is technically a 2-to-1 point. According to Mr. Bottorff, however, CN and WC do not compete for rail service to customers at Oba. There are no industries at that location, and WC only originates or terminates traffic at team tracks that it maintains there. (CN has no team tracks at Oba, and it neither originates nor terminates rail traffic there.) In 1999, 289 cars originated on WC at Oba, but all but one terminated in Canada on WC itself. The one exception was a single car terminating in Duluth, at a point that is served by a single railroad and is closed to switching for CN or any other railroad. Clearly, therefore, the CN/WC merger would not reduce competition for rail traffic to or from Oba.

⁶Traditionally, rail merger analysis has sought to identify 2-to-1 routes/locations because the STB has identified such service consolidations as problematic and typically in need of remedial action. The STB has historically examined 3-to-2 situations on a case-by-case basis, and generally required no remedial action in 3-to-2 corridor/location instances, due to the intensity of competition that typically remains when two railroads service a common corridor/location. The historical performance of two-rail competitive instances demonstrates that corridors/locations under these conditions continue to exhibit robust rail competition, thus confirming the efficacy of the STB's policy decision in this regard. Three-to-two structural changes do not even presumptively merit remedial action, but it is reasonable to identify them so that parties with specific concerns may address them through case-by-case analysis.

every instance in which CN and WC participate in movements of the same product to the same destination. In every instance, I found that receivers at these destinations have access to very large volumes from alternative competitive sources for each relevant product. These alternatives will continue to provide significant competitive discipline of the pricing and service level of the combined firm. Thus, the proposed Transaction will not create any opportunities for the combined firm to raise prices or reduce service levels.⁷

Third, I considered the potential for competitive harm at locations where the Transaction results in no reduction in the number of serving railroads. Obviously, such instances afford no potential for reduced rivalry between the two railroads (since no rivalry existed in the first place). The potential for any reduction in competition due to "vertical foreclosure" is also non-existent, as the proposed combination has no impact on how either railroad prices or serves the locations where one of them currently offers the only source of rail transportation.

III. ANALYSIS OF SOURCE COMPETITION

A. Overview

I provide an illustration of source competition in Exhibit 1. Consider customers receiving a particular product that take delivery in a destination BEA⁸ designated DBEA-1. If the two merging roads in the upper panel – merging railroad 1 ("MRR1") and merging railroad 2

⁷We also examined the alternative form of geographic competition ("destination competition"), which can arise where two railroads each originate traffic of a specific good from a common location, though this traffic may be headed to different destinations. Theoretically, shippers located at a particular origin might rely on their choice of railroads that can move the same product to different destinations to obtain competitive prices and service levels. Our examination identified a very limited set of relevant flows, all from Chicago, that I describe in note 31, *infra*, and that Mr. Bottorff addresses.

⁸"BEA" refers to the Bureau of Economic Analysis (BEA) Economic Areas. The continental United States is divided into 172 BEAs. I discuss the economic basis and implications of a BEA-based analysis in the next section.

("MRR2") – were the only providers of service into DBEA-1 as in the top panel of Exhibit 1, the competitive problem would be obvious.

The competitive interaction may be more subtle, however. In the bottom panel of Exhibit 1, the same logistics exist, except that merging railroad 2 hands off its originating traffic of the relevant product to railroad 3 for ultimate delivery into DBEA-1. Here, too, receivers of the relevant product located in DBEA-1 may see them as rivals – merging railroads 1 and 2 both serve as originators of the relevant product, and as such, represent alternative sources of supply. A merger between the two merging railroads may, if there is no bottleneck at the destination, allow the combined firm to internalize this rivalry, and profitably raise the price (or reduce the service levels) for transportation of the relevant product into DBEA-1. By internalizing this rivalry, the combined firm recognizes that customers can no longer "play the rivals off one another," since the potential lost profits merging railroad 1 might lose to merging railroad 2 by raising its price too high (and losing the business) is no longer "lost" by the combined firm.

In order to assess the prospect that such anticompetitive behavior would be in the profit-maximizing interest of the combined firm as a result of this Transaction, it is constructive to turn to standard techniques and analyses undertaken by federal antitrust enforcement officials in their assessment of the competitive ramifications of mergers and acquisitions. In the U.S. Department of Justice and Federal Trade Commission Merger Guidelines, this analysis includes a consideration of relevant product and geographic markets where the merging firms actually overlap (or can potentially overlap). Once identified, these relevant markets are evaluated with respect to the degree of competitive overlap between the merging firms, the number and size of actual rivals to the merging firms in the relevant markets, and the number and size of potential rivals to the merging firms in the relevant markets. Relevant markets where the merging firms

have a very limited competitive overlap, or where other significant actual or potential rivals exist, are generally considered immune to potential anticompetitive harm resulting from the proposed merger.

In this context I undertook such an analysis of product/destination pairs to consider, more expansively, the potential competitive effects of the proposed combination between CN and WC. I began by identifying specific product/destination pairs (e.g., corn delivered to the Chicago BEA) where CN and WC originate, terminate, or otherwise handle a significant portion (as identified by a "50/10" screen, described below) of the product destined for the relevant geographic area.⁹ For the purposes of this report, I defined as a candidate for a more complete competitive analysis any traffic terminating in a BEA for which each of CN and WC in 1999: 1) originated, terminated, or interchanged (henceforward "participated" in) 10% or more of the total carloads of a commodity delivered to the BEA, if the combined share calculated on this basis without double-counting CN or WC participation would have been 50% or more of total delivered volume;¹⁰ or 2) originated 10% or more of the total carloads of a commodity delivered to a BEA, if the combined originated share of the two roads would have been 50% or more; or 3) terminated 10% or more of the total carloads of a commodity delivered to a BEA, if the combined terminated share of the two roads would have been 50% or more. I describe my

⁹ALK Technologies, Inc. ("ALK") performed the analysis pursuant to my specifications, using the 1999 STB Waybill Sample.

¹⁰To avoid double-counting in the participation screen, the combined share had to be at least 10 percentage points higher than the greater of either railroad's participation share. I illustrate this point in Appendix A. Although the three screens may appear logically redundant, they are not. In product/DBEA pairs where CN and WC jointly participate in some movements (for example, CN originates and WC terminates the same movement), it is possible that the originating- or terminating-railroad screen will identify a flow that the participating-share screen does not. I illustrate this point also in Appendix A. In fact, the second approach noted in the text (originating-railroad screen) identified some flows not identified by the participating-share screen. (These additional flows are shown in the second panel of Exhibit 3.) The third approach (terminating-railroad screen) did not identify any additional flows.

specifications for this screen in Appendix A.¹¹ (I sometimes refer to the destination BEAs involved in these flows as "DBEAs" or "50/10 DBEAs" and to the combination of a traffic flow and a DBEA as "product/DBEA pairs" or "50/10 product/DBEA pairs.")

I am of course using this so-called "50/10" analysis not to draw any final conclusions about competitive effects, but as a screen to identify traffic that warrants further analysis. Traffic that the 50/10 test identifies may not be traffic for which CN and WC are in fact the effective rail constraints on each other, any more than a number of other railroads moving large volumes of traffic that is source-competitive with the CN and WC traffic. In any event, the screen does not provide any indication of the extent of source competition after the Transaction from other railroads, modes, and sources, which is the critical point and which I examine extensively in a separate analysis.

As the Board is aware, the use of quantitative screens is common in competition analysis. The Herfindahl-Hirschman Index ("HHI") is commonly used for this purpose by antitrust enforcement agencies although this index is not appropriate for use in the rail industry. I understand that the ICC has explained that the predictive power of "indices such as the HHI are less directly linked to market power in the railroad industry than they are in manufacturing or

¹¹As the Board is aware, the Waybill Sample may in the case of "Rule 11" movements identify locations as destinations or origins that are in fact points of interchange. This limitation means that the Waybill may overstate CN and WC shares of movements to a BEA.

retailing.”¹² The ICC’s conclusions remain correct today.¹³ Moreover, it is not practicable to apply HHIs to the rail industry.¹⁴

At the same time, a screen is a useful starting point in considering competitive effects. I find that the 50/10 screen, although itself an index, provides a reasonable filtering device with which to identify candidate product/DBEA pairs for further analysis. Parties in past merger proceedings have used the 50/10 analysis as a screen, and the ICC and the Board have accepted such evidence for that limited purpose.¹⁵ I have applied the screen to rail traffic only, not taking into account truck competition. A substantial reduction in source competition is unlikely if one

¹²*Union Pac. Corp. – Control – Chicago and N.W. Transp. Co.*, ICC Finance Docket No. 32133, Decision No. 25, slip op. at 86 (ICC served March 7, 1995) (“*UP/CNW*.”). The ICC pointed out that, in manufacturing and retailing, “changes in industry output and changes in the number of firms operating in the industry are highly correlated.” *Id.* Railroads, in contrast, generally have excess capacity, and therefore have “the economic incentive to reduce rates, expand output, and increase profits.” *Id.*

¹³Thus, while mergers have reduced redundant capacity, the route system of an existing rail carrier exhibits relatively high fixed costs, a general if not entirely uniform absence of barriers to expansion (i.e., the general absence of capacity limits along most specific routes), and highly differentiated rail services. These characteristics are present in sufficient degree to provide strong incentives for railroads to fully utilize capacity and to cheat on any attempt to collude, as well as the ability to expand or shift capacity across various routes. In industries with these characteristics, an HHI-based screen of competitive overlaps (and a preliminary assessment of their severity using HHIs) tends to significantly overstate the potential for competitive harm.

¹⁴Market shares measured by the Waybill Sample, which captures output, say little about capacity. It would not be practicable to measure the capacities of all railroads serving a relevant area, as doing so would require analyses of line densities, yard and main line operations and capacities, signaling and other technologies, and so forth.

¹⁵See *Union Pac. Corp. – Control & Merger – Southern Pac. Rail Corp.*, 1 S.T.B. 233, 396 (1996) (“*UP/SP*”) (relying on evidence relating to source competition presented by applicants’ witnesses Barber and Peterson, which included 50/10 screen as well as additional volume-based screen); Verified Statement of Richard J. Barber, *UP/SP-23*, at 371, 482-86 (filed Nov. 30, 1995), *UP/SP*; Verified Statement of Richard B. Peterson, *id.*, at 233-34 (same); *Union Pac. Corp. – Control – Missouri Pac. Corp.*, 366 I.C.C. 462, 528-29, 676-77 (1982) (“*UP/MP*”) (relying on evidence relating to source competition presented by DOJ witness, which included 50/10 screen; ICC agreed with DOJ that the screen probably overstated potential loss of source competition because product competition would mitigate possible reductions in source competition). The ICC rejected 50/10 analysis as a basis for drawing conclusions about competition, as distinct from using it as a screen. *UP/CNW*, Decision No. 25, slip op. at 79.

of the Applicants has less than 10% of the relevant rail traffic, or if Applicants together would have less than 50%.¹⁶

The results of this screen, which I present generally in Exhibit 2, indicate that there are few product/destination pairs where CN and WC participate significantly in movements of the same product from different origins to the same destination. Exhibit 2 provides a list of the product/DBEA pairs and number of relevant carloads shipped by CN and WC for each pair that is generated after applying the participating, originating, or terminating 50/10 screen with respect to CN and WC. There are 31 product/DBEA pairs that are identified under the 50/10 screen when any CN/WC participation in traffic moving to a DBEA is counted, and an additional 21 product/DBEA pairs when CN and WC shares as originating railroads of traffic moving to a DBEA are counted.¹⁷ (As I have already noted, our terminating-railroad screen revealed no pairs in addition to those identified by screening the participation shares.)

As can be seen in Exhibit 2, most of the 50/10 product/DBEA pairs involve combined CN/WC traffic volumes that are very small individually. For example, there are only 21 product/DBEA pairs where the combined volumes of the two railroads amount to more than a carload a day. Of those product/DBEA pairs, there are three that would amount to one train a week. Some are less than 100 carloads a year. I understand that the Board has stated that it must approve a transaction of this type "unless there will be adverse competitive impacts that are both

¹⁶A combined share of under 50% implies that there is at least one other railroad (and probably more) originating or terminating significant volumes of the relevant product that move to the candidate DBEA. Given the expansive networks of many North American railroads, the likelihood for substantial additional volumes to be diverted from other destinations into the candidate DBEA (a concept I term "divertible capacity" that is developed, *infra*) is extremely high and obviates the need for any further analysis.

¹⁷In Exhibit 2, "PRR" and "ORR" refer, respectively, to "participating railroad" and "originating railroad."

'likely' and 'substantial.'"¹⁸ The small CN/WC volumes within the 50/10 product/DBEA pairs indicate that this Transaction will not entail any such anticompetitive effects.

Critical Loss. Despite the insubstantial nature of these actual/potential interactions, Applicants asked me to conduct a detailed analysis of the potential for competitive harm. As already indicated, the ultimate question one seeks to answer in assessing the competitive consequences of a proposed merger is whether the merged firm will have the incentive and ability, post-merger, to raise prices (or reduce service). Accordingly, for the product/DBEA pairs identified by the screen, I evaluated the ability (both actual and potential) of other providers of transportation services to prevent the combined firm from raising prices (or reducing service) after the proposed combination. Other providers of transportation services provide such competitive discipline if they collectively have the ability and incentives to take sufficient volumes from the combined firm in the event of price increase so as to render such an increase unprofitable.

To find a price increase profitable, the combined firm must believe that the added contribution it will earn due to the higher price it will receive on the traffic it continues to carry after the price increase will be greater than the contribution it will lose as a result of some of the volume it currently serves moving to another provider (or ceasing to be moved) in response to the higher price. If the combined firm believes that its customers will seek to move a sufficient portion of their volumes to other providers and that these other providers have the capacity and incentive to take on this additional volume, then the losses associated with the price increase will be expected to exceed the benefit of the higher price earned on the retained volume. This

¹⁸*Kansas City S. Industries, Inc. - Control - Gateway W. Ry. Co.*, STB Finance Docket No. 33311, slip op. at 2 (STB served May 1, 1997).

minimum sufficient volume that renders such a price increase unprofitable is commonly referred to in antitrust as the "critical loss."¹⁹ If the combined firm perceives that customer movements to others will exceed this "critical loss" then the merged firm will not have an incentive to raise prices after the combination. If the firm attempted an increase, it could not profitably sustain it. Thus, no anticompetitive harm can arise.²⁰ In Appendix B, I describe how I computed the critical loss for each product/DBEA pair identified by the 50/10 screen.

Competitive Alternatives and "Divertible Capacity." Having identified candidate product/DBEA pairs for further analysis, and having identified the critical loss volumes under each relevant product/DBEA pair that would ensure that the merged firm will not have the incentive to raise price and harm customers post-merger, I then sought to determine the extent to which rivals have the ability and capacity to supply the traffic demands of a sufficient volume of traffic for each product/DBEA pair to impose the critical loss. To complete this level of the analysis I considered the available "divertible capacity" that could serve each relevant product/DBEA pair.

The concept of "divertible capacity" identifies the potential entry/expansion of additional capacity into the market at issue. If the combined firm were to raise prices for a particular product/DBEA pair, it would create additional profit opportunities and incentives for other railroads (and other providers of transportation more generally) to capture additional volume at

¹⁹Critical loss analysis has become a central part of many merger investigations at U.S. enforcement agencies and elsewhere. For an early treatise on the concept, see J. Hausman, G. Leonard, and C. Velluro, "Market Definition Under Price Discrimination," 64 *Antitrust L.J.* 367 (1996).

²⁰Note that reductions in service quality can be treated in the same fashion. In this instance, it is the "service-adjusted price" that may be increased by the combined firm if the loss in volume is sufficiently small. Once again, however, movements to rivals above the critical loss will discipline the combined firm with respect to its service level.

that DBEA. To the extent that these railroads (and their customers) have ready access to additional volumes that are currently serving other destinations, these incentives will cause these railroads (and their customers) to divert these volumes into the targeted product/DBEA. Where the available divertible capacity significantly exceeds the critical loss, it should deter the combined firm from raising its price, and would make it impossible for the combined firm profitably to sustain a price increase if it tried. I explain the methodology to identify divertible capacity in Appendix C.

Truck Divertible Capacity. Finally, as an additional consideration, I evaluated the magnitude of truck-based competition, including truck-based divertible capacity. Reebe Associates performed this analysis, pursuant to my specifications.²¹ I am aware that, in the *Fox Valley* decision, the Board observed that, "[o]n the whole . . . motor carrier competition within Wisconsin is, as WCTC indicates, pervasive and growing." *Wisconsin Cent. Transp. Corp. – Continuance in Control – Fox Valley & W.*, 9 I.C.C.2d 233, 242 (1992). The more recent data amply confirm this view. In general, truck shares for traffic moving to the DBEAs identified in the 50/10 screen were very high (both inside and outside Wisconsin). Although these high truck shares are suggestive of strong truck competition, I did not draw conclusions simply from modal shares as to the potential of truck competition to constrain any post-merger price increases by a combined CN/WC. Instead, I conducted a truck-divertibility study, the method for which I describe in Appendix D, and the results of which I discuss below at the conclusion of subsection B.2.

²¹The Reebe data were only available on a 4-digit STCC level. As Mr. Bottorff confirms with respect to the products we are considering, a STCC-7 product will generally have similar characteristics regarding truck transportation as other products within the same STCC-4 group.

B. Competitive Analysis of 50/10 Product/DBEA Pairs

Exhibit 3 provides a detailed breakdown of the competitive analyses undertaken for each 50/10 product/DBEA pair. In every pair, I find that the proposed combination will pose no threat to competition. I discuss the specifics of my findings below. I begin with a general discussion of the information provided in Exhibit 3, and how these data relate to my findings.

Exhibit 3 consists of two panels. Each panel relates to flows of a commodity to a BEA. The first panel identifies participating-railroad-based 50/10 product/DBEA pairs and the second panel identifies originating-railroad-based 50/10 product/DBEA pairs above and beyond those identified by the participating-railroad screen. (Each panel is organized in descending order by the combined CN/WC volume in the product/DBEA pair.) As I have already noted, there are no separate terminating-railroad-based 50/10 product/DBEA pairs displayed in Exhibit 3 because each of those was identified by the 50/10 participation-based shares. The initial columns in Exhibit 3 identify the 7-digit product code (or "STCC") and the DBEA under consideration. The data upon which I relied to determine whether a competitive analysis was warranted for each product/DBEA pair appear next. All 50/10 product/DBEA pairs involve movements where the post-merger share of traffic for the combined firm exceeds 50%, and is at least 10 share points higher than either constituent firm's share prior to the combination. As I have already noted, the CN/WC volumes involved in these flows are generally small.

1. Treatment of "Bottleneck" Destinations

Seven of the product/DBEA pairs identified in Exhibit 3 involve Green Bay, WI as the DBEA. Mr. Bottorff has determined that Green Bay represents a WC bottleneck – WC is the only railroad with track serving the Green Bay BEA. As a bottleneck railroad, WC – prior to the Transaction – already must participate in all rail flows into and out of Green Bay. As a result,

the proposed combination does not enhance the degree of control in rail service that the WC has to or from Green Bay. With no change in the degree of control, no diminution in horizontal competition associated with the proposed combination can occur; therefore, I do not perform any divertible capacity analysis on these product/DBEA pairs, which I identify with a "Yes" in the bottleneck column of Exhibit 3.²²

The only potential for anticompetitive harm that could theoretically arrive in such bottleneck circumstances is the potential for vertical foreclosure. I discuss the absence of vertical foreclosure issues in rail movements (the "one lump" approach) in Section IV, *infra*.

There are other 50/10 pairs where, for example, WC terminates 100% of rail shipments of a given product into a DBEA (albeit involving small volumes), e.g., WC terminates all of the 80 carloads of iron bars into Appleton, WI that CN and WC originate, and Iron Bars/Appleton qualifies as a 50/10 product/DBEA pair under the originating traffic screen. I understand that Appleton, is not a bottleneck DBEA as at least one other railroad serves Appleton. Insofar as other railroad(s) offer potentially competitive access into the DBEA under consideration, a divertible capacity analysis is appropriate. If these alternative railroads do not offer an economically reasonable route into the relevant DBEA, then the DBEA represents an effective bottleneck and is subject only to the foreclosure consideration provided in Section IV. I identify with a "P" (possible) in the bottleneck column the product/DBEA pairs for which WC or CN terminated 100% of the traffic but as to which the DBEAs are served by other railroads. As a

²²The product/DBEA pairs involving Green Bay are instances where WC and CN both originated traffic into Green Bay in volumes that pass the 50/10 originating threshold. This "competitive overlap" is illusory, however, since WC already controls CN's access into Green Bay.

conservative measure, I perform divertible capacity analyses for each of these 50/10 product/DBEA pairs.

2. Interactions at Non-Bottleneck Destinations

For each non-bottlenecked 50/10 product/DBEA pair (those with a "No" or a "P" in the bottleneck column of Exhibit 3), I perform an analysis of competition available through entry/expansion of transportation services by rail and, in certain instances, truck. First, I determine the critical loss required to defeat a 5% price increase on shipments destined for the 50/10 product/DBEA under study. As I explain in Appendix B, I evaluate the critical loss at a 50% gross margin (contribution) and at an 80% gross margin, to provide a plausible range of critical loss values.²³

Having determined the critical loss volumes, I compute available divertible capacities and compare them to the critical losses. If the divertible rail capacities significantly exceed the critical loss, then the ability of other railroads to divert traffic into the DBEA under study will provide sufficient competition, post-merger, to prevent anticompetitive pricing by the combined firm. I initially consider what for convenience I will call direct divertible capacity ("DDC") and compute the ratio of DDC to the critical loss.

Historically, in critical loss-based analyses for mergers in other industries, I have sought to identify available divertible capacity of at least 2-3 times the critical loss to ensure sufficient post-merger competition. As a highly conservative measure in this case, I conclude that

²³I have presented critical loss/divertible capacity analyses in the context of merger-related antitrust investigations in a wide variety of industries and to many antitrust/regulatory agencies. Industries where I have conducted critical loss/divertible capacity analyses include: paper, sugar, salt, fertilizers, chemicals, chemical derivatives, railroad equipment, textiles, television advertising time, and banking services (just to name a few). I have presented these analyses to the U.S. Department of Justice, the U.S. Federal Trade Commission, the Federal Reserve Board, the Federal Communications Commission, the Securities and Exchange Commission, and the European Commission, among others.

available DDC is sufficient to obviate any further analysis if the DDC/critical loss ratio exceeds 10.

As detailed in Exhibit 3, the available DDC/critical loss ratio in almost every 50/10 product/DBEA pair exceeds 10. Indeed, in most pairs, the available DDC dramatically dwarfs the requisite critical loss. For example, for corn to Chicago (which is the largest product/DBEA pair), the 127,154 carloads of DDC are over 88 times the critical loss (1,438 carloads), calculated on the most conservative of the contribution assumptions that I employ.²⁴ Woodpulp to Wausau is the second largest product/DBEA pair. For that pair, the 22,000 carloads of DDC are over 39 times the critical loss of 560 carloads, again calculated on the most conservative contribution assumption.²⁵ For the third largest pair, printing paper to Milwaukee-Racine, the DDC is just under 70 times the critical loss of 530 carloads. These are by no means the largest ratios. Given the sizeable practical and readily available rail capacity that can be brought to bear on the 50/10 product/DBEA pairs, I conclude that the proposed combination will not enable the combined firm to raise prices anticompetitively.

For three of the 50/10 product/DBEA pairs in which the combined firm participates in less than 100% of the movements of a commodity to a DBEA, the ratio of DDC to critical loss, calculated on the conservative contribution assumption, is less than my conservative benchmark

²⁴As discussed by Mr. Bottorff, over 50% of the originations of corn moving to Chicago attributed to WC in the 1999 Waybill Sample were due to an equipment shortage at WSOR. WSOR has since cured the shortage and is moving corn to Chicago in single-line service. WC movements have accordingly decreased. Therefore, the ratio in the future of DDC to critical loss will likely be even higher than 88, if the 50/10 screen identifies this product/DBEA pair at all.

²⁵As I explain in Appendix B, the size of the critical loss is determined in part by the percentage contribution margin on the traffic that the combined firm would lose if it were to increase prices. The larger that margin, the smaller is the amount of lost traffic that would render the price increase unprofitable. Because what we are examining is small volumes of incremental traffic, which do not require additional trains or even locomotives, I used marginal contribution rates of 50% and 80%. At the plausible 80% rate, the ratio of DDC to critical loss for corn/Chicago is 141 and for woodpulp/Wausau is 63.

of 10.²⁶ These are small volumes.²⁷ In any event, as can be seen on Exhibit 3, for two of these three pairs (synthetic rubbers/Duluth-Superior, and paper waste scrap/Columbus, OH) the ratios of DDC to critical loss are still more than twice the ratios of 2-3 that I ordinarily consider sufficient. Available DDC for these pairs is thus significant and more than adequate to discipline pricing.

There is also a small group of low-volume product/DBEA pairs in which CN and WC participate in 100% of movements of the commodity to the 50/10 DBEA and the DBEA is not a bottleneck. The combined CN/WC volumes for each of these pairs involve less than a carload a day. For this small subset of product/DBEA pairs, there was by definition no DDC because in 1999 no other railroad participated in movements of the 7-digit STCC to the DBEA.²⁸ For this subset, and for the three small instances discussed above where the critical loss ratio was less than 10, we analyzed what I term supplemental divertible capacity ("SDC"). These SDC volumes are computed according to the criteria set forward in Appendix C. Generally, the methodology of the supplemental analysis is similar to that of the primary analysis. The main difference is that an origin can qualify as a source of divertible capacity if a railroad other than CN/WC moved the relevant 4-digit STCC product group from that origin to the 50/10 DBEA, although not the same 7-digit product, so long as the railroad is shipping that 7-digit STCC to

²⁶Where the DDC/critical loss ratio calculated on the 50% marginal contribution assumption is less than 10, it is also the case arithmetically that DDC is less than the CN/WC volume for the product/DBEA pair.

²⁷For synthetic rubbers to the Duluth-Superior BEA, the total of CN and WC participation is 520 carloads; for paper waste/scrap to Columbus, OH, 80 carloads; and for specialty transformers to Houston, 120 carloads.

²⁸This is not to say that no other railroads ever participate in these product/DBEA pairs but only that no other railroad participated in these pairs in the 1999 Waybill Sample. Given the small volumes in these product/DBEA pairs, it is possible that other railroads are participating but their movements were not sampled. It may also be possible in some of these 100% cases, however, that either CN or WC represents an effective bottleneck. If and where that is true, these pairs would be more appropriately considered under the one lump analysis of Section IV.

some other BEA from that same origin. As with the DDC volumes, I compare the available SDC volumes with the requisite critical loss volumes. These ratios (where applicable) appear in the right-hand most columns of Exhibit 3. As the results clearly indicate, almost every remaining 50/10 product/DBEA pair has access to additional volumes that are more than enough to ensure competitive pricing by the combined firm, post-Transaction. The three small exceptions pose no competitive problem.²⁹

Finally, I also consider the competitive discipline that truck competition might bring to bear on the 50/10 product/DBEA pairs where the DDC/critical loss ratio is below 10. These instances consist of the 100% cases, and the three less-than-100% cases discussed above. The results of this analysis are provided in Exhibit 4. As previously noted, truck data is available at the 4-digit STCC level. We estimated the available 7-digit STCC level truck divertible capacity by multiplying the available 4-digit STCC truck divertible capacity by the proportion of each rail 4-digit STCC group moving to the DBEA that was comprised of the relevant rail 7-digit STCC product. This analysis revealed very large volumes of divertible capacity moving by truck.³⁰ For example, as I have already described, the DDC available by rail for synthetic rubbers destined for Duluth is five to just under nine times the critical loss amount. Because the rail DDC was less than ten times the critical loss volume, I undertook an analysis of divertible capacity available by using trucks, based on the relevant 4-digit STCC volumes. As shown on Exhibit 4, at the

²⁹The three small exceptions are specialty transformers to Houston (CN/WC combined volume is 120 carloads), wood particle board to Wausau (160 carloads), and iron bars to Appleton (80 carloads). As shown in Exhibit 4, for each of these product/DBEA pairs, the ratio of truck divertible capacity to critical loss is huge. Further, Mr. Bottorff discusses why it is likely that CN and WC are not in fact competing with each other with respect to specialty transformers moving to Houston, and additional reasons why a combined CN/WC could not in any event exercise market power with respect to any of the three pairs.

³⁰These very large ratios provide additional confidence that any imprecision in our estimate of 7-digit STCC truck divertible capacity would not change the conclusion that such capacity is ample.

estimated 7-digit STCC level, the divertible capacity available through truck shipments is almost 501 times the critical loss computed on the conservative assumption of 50% marginal contribution.³¹

IV. COMPETITIVE ISSUES RELATING TO SOLE PROVIDER ("BOTTLENECK") LOCATIONS

There are locations within the CN and WC rail systems where CN or WC, as the case may be, is the only provider of rail service.³² Also, there are small railroads that serve additional locations and that connect only to CN or only to WC.³³ Obviously, no competitive rivalry at these sole-served locations is eliminated as a result of the proposed combination, since, by definition, either CN or WC, as the case may be, cannot serve these locations.³⁴ Thus no "horizontal" antitrust issues can arise at these locations as a result of this combination.

Competitive concerns surrounding sole-provider locations typically involve "vertical" issues. Under a vertical theory of anticompetitive harm, the possessor of market power in one market uses this power as leverage to further its market power position in that market, or to extend its market power into other markets. In the context of the rail industry, concerns (in

³¹An alternative form of geographic competition can arise where different railroads move the same commodity from the same origin to different destinations. The only points that CN and WC have in common in the U.S. are Superior and Chicago. (Oka is the only such point in Canada.) We applied the 50/10 screen to originations, and identified four product flows from Chicago (empty TOPC returns, plastics, carbon dioxide, and paper waste and scrap). For each of these flows, rail divertible capacity, and/or truck competition as discussed by Mr. Bottorff, are ample to ensure that CN/WC would be unable profitably to sustain an anticompetitive price increase.

³²In contrast to my usage in Sections II and III, in this Section IV "CN" and "WC" refer only to railroads within the respective corporate families.

³³All traffic on an exclusively served shortline from or to locations outside its network must travel through the network of the sole-serving third-party railroad.

³⁴The 50/10 analysis that I have already described would identify traffic flows from these locations for which CN and WC may be in source competition with each other.

theory) arise where a railroad that provides sole access to various locations might use this sole access to disadvantage rivals, or extend its power beyond its current reach.

Economists and policy analysts of the rail industry have recognized that it is highly unlikely that such extensions of localized sole provider power can be extended as a result of a proposed combination where such an extension would not be possible absent a merger. The basic economic concept is referred to as the "one lump" theory. I provide a numeric illustration of the analysis in Appendix E.

Recognition that a bottleneck carrier's incentive and ability to extract all available economic rents associated with the overall traffic move is independent of its ownership position of any originating (or interconnecting) routes represents the long-standing basis upon which the ICC and STB have evaluated the end-to-end components of rail mergers. Shortly after passage of the Staggers Act, the ICC stated:

A carrier with a destination monopoly will likely push the through rate as high as possible and keep the monopoly profits to itself . . . [Shippers have asserted] that a neutral destination carrier . . . has an incentive to merge with an origin carrier in order to drive the through rate to the optimum profit-maximizing level. We are not convinced . . . that a carrier with a destination monopoly for steam coal traffic will generally be unable to execute the described rate strategy or, on the other hand, that a neutral destination carrier that is unable to execute the strategy would be significantly more capable of raising the through rate to the level that maximizes its profits after affiliation with an origin carrier.

UP/MP, 366 I.C.C. at 538.

The ICC reiterated the analysis in its *BN/SF* decision:

Our experience has been that where a single rail carrier controls a destination segment, and no transportation alternatives are available, the shipper will be captive and the single rail carrier will be able to capture the preponderance of the economic profits. Conversely, when certain factors are present that limit a carrier's

ability to take full advantage of a bottleneck, those factors will remain in place as effective safeguards after the merger.

Burlington N. Inc. – Control and Merger – Santa Fe Pac. Corp., 10 I.C.C.2d 661, 751 (1995).

The Court of Appeals, in affirming this decision, noted that the “one lump” theory relied on by the ICC is a “broadly accepted economic proposition.” *Western Resources, Inc. v. STB*, 109 F.3d 782, 788 (D.C. Cir. 1997).³⁵

As it had in *BN/SF* (10 I.C.C.2d at 751), the Board recently rejected arguments that “the general applicability of the one-lump theory to mergers requires a set of explicit and rather implausible assumptions” and that “the circumstances in which the pure one-lump theory is likely to hold represent an ‘extreme example.’” *CSX Corp. – Control and Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388, Decision No. 89, slip op. at 70 (STB served July 23, 1998) (“*CSX/NS/CR*”).³⁶

Leaving aside the economic principles outlined in Appendix E that provide the analysis behind the one lump approach to end-to-end rail merger issues, and the extensive history at the ICC and the STB (in which the one lump approach has served as the cornerstone of the agency’s consideration of vertical foreclosure issues), I understand that CN has offered further insurance that such vertical issues will not arise in the context of the proposed CN/WC combination. CN has committed to keeping all existing active gateways affected by the Transaction open on commercially reasonable terms. I find that this commitment provides safeguards against

³⁵I understand that the STB has left the door open for allegedly aggrieved shippers to demonstrate that any purported vertical foreclosure will lead to competitive injury (typically, higher prices of reduced service quality). See, e.g., *BN/SF*, 10 I.C.C.2d at 748 (quoting *Union Pac. Corp. – Control – MO-KS-TX Co.*, 4 I.C.C.2d 409, 476 (1988)).

³⁶For example, the Board pointed out that the one lump theory “does not predict that bottleneck carriers will always be able to execute a perfect price squeeze; it merely predicts that vertical integration will not increase the bottleneck carrier’s market power over shippers.” *CSX/NS/CR*, slip op. at 69.

potential competitive problems that are extremely unlikely to arise. Be that as it may, with these assurances in place, any shipper concerns (regardless of their economic or business veracity) should be eliminated.

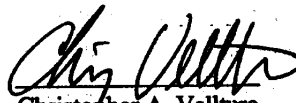
CONCLUSION

I have examined competitive issues related to the proposed Transaction between CN and WC. It is clear to me that the Transaction will have no anticompetitive effects.

VERIFICATION

I, Christopher A. Velturo, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on ~~March~~ ^{April} 6, 2001.


Christopher A. Velturo

CHRISTOPHER A. VELLTURO
Principal

Phone: (617) 349-2143
Fax: (617) 864-3742
cvellturo@analysisgroup.com

One Brattle Square
Fifth Floor
Cambridge, MA 02138

Dr. Vellturo has performed economic analysis and provided expert testimony in the context of mergers and acquisitions, antitrust litigation, intellectual property litigation, and other matters. He has provided economic analysis in over one hundred mergers and acquisitions spanning a broad array of industries. He has appeared before the U.S. Department of Justice, the Federal Trade Commission, various states' Attorneys General offices, the Federal Reserve Bank Board of Governors, and various Federal Reserve Banks on merger-related issues. He has also appeared at hearings before the European Commission. Dr. Vellturo has performed economic analysis relating to litigation matters in more than twenty-five antitrust actions and more than one hundred intellectual property actions. He has testified in U.S. District Court and before the American Arbitration Association.

Prior to joining Analysis Group/Economics, Dr. Vellturo was a Senior Vice President at National Economic Research Associates (NERA) and a Director of Cambridge Economics. He was previously a research associate for Dean Ann F. Friedlaender of the Massachusetts Institute of Technology.

Dr. Vellturo has published on a variety of topics, including merger and acquisition-related efficiencies, price discrimination, differentiated product analysis and market definition. His research has appeared in leading academic journals, including *Antitrust*, the *Antitrust Law Journal*, and the *Journal of Economics and Management Strategy*. Dr. Vellturo is a recipient of the Bradley Fellowship in Public Economics and has served as a referee for *American Economic Review* and *Rand Journal of Economics*.

Dr. Vellturo holds a Ph.D. in Economics from the Massachusetts Institute of Technology and a Sc.B. in Applied Mathematics and Economics from Brown University, where he graduated *magna cum laude* and *Phi Beta Kappa*.

EDUCATION

- 1989 Ph.D. in Economics, Massachusetts Institute of Technology
 Primary Fields: Econometrics, Industrial Organization
 Secondary Fields: Public Finance, Game Theory, Law and Economics
- 1983 Sc.B. in Applied Mathematics and Economics (*magna cum laude*), Brown University

PROFESSIONAL EXPERIENCE

- 2000-Present **Analysis Group/Economics**
 Principal - Direct research and provide expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Expert reports and testimony presented in U.S. District Court. Presented antitrust economic analyses to Federal Trade Commission, U.S. Department of Justice, Federal Reserve Bank Board of Governors and the European Commission.
- 1996-2000 **National Economic Research Associates, Inc.**
 Senior Vice President (1999-00)
 Vice President (1996-99)
- 1991-1996 **Cambridge Economics, Inc.**
 Director - Directed research and provided expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Prior expert testimony provided in U.S. District Court and before the American Arbitration Association. Presented antitrust economic analyses to U.S. Department of Justice, Federal Trade Commission (Antitrust Division), state Attorneys General offices, and the Federal Reserve Bank Board of Governors.
- 1989-1991 **National Economic Research Associates, Inc.**
 Senior Consultant - Directed and performed research relating to issues of antitrust, intellectual property, mergers and regulation.
- 1987 **Department of Economics, M.I.T.**
 Teaching Assistant - Undergraduate econometrics.
- 1985-89 **Dean Ann F. Friedlaender, M.I.T.**
 Research Associate - Participated in research relating to transportation pricing and capital allocation responses to regulatory changes.
- 1983-85 **National Economic Research Associates, Inc.**
 Research Associate - Conducted research on a wide variety of issues including antitrust, railroad rate setting, optimal landfill pricing, and PCB and asbestos abatement strategies.

AWARDS AND PROFESSIONAL ACTIVITIES

Recipient, Bradley Fellowship in Public Economics, 1987 and 1988-89

M.I.T. Departmental Fellowship, 1986

Phi Beta Kappa, Brown University, 1983

Sigma Xi, Brown University, 1983

Journal Referee for *American Economic Review* and *Rand Journal of Economics*

Member, American Economic Association

SELECTED TESTIFYING EXPERIENCE (PAST FOUR YEARS)

- *Massachusetts Businessman's Association Inc., v. Blue Cross and Blue Shield of Massachusetts, Inc.*
Superior Court of the Commonwealth of Massachusetts, (C.A. No. 97-02279)
- *Union Carbide Chemicals & Plastics Technology Corporation v. Shell Oil Company, Shell Chemical Company and CRI Catalyst Company.*
U.S. District Court, District of Delaware, C.A. No. 99-274 (SLR)
- *Carl Zeiss Jena GmbH, Carl Zeiss Inc., v. Bio-Rad Laboratories, Inc., Cornell Research Foundation Inc. and Bio-Rad Laboratories, Inc., Cornell Research Foundation Inc., v. Carl Zeiss Jena GmbH, Carl Zeiss Inc*
U.S. District Court, Southern District of New York, C.A. 98 CIV 8012
- *Sulzer Intermedics, Inc. v. Medtronic, Inc., et al.*
U.S. District Court, Southern District of Texas, (C.A. H-97-3526)
- *Joseph E. Seagram & Sons, Inc., The Seagram Company Ltd. and JDC S.A. de C.V. v. St Maarten Spirits, Ltd., and St. Maarten Spirits Limited*
Superior Court of the State of California, for the County of Los Angeles, (No. BC 191 681)
- *General Electric Capital Corporation v. DirecTV, Inc., Hughes Electronics Corporation and General Motors Corporation*
U.S. District Court, District of Connecticut, 3:97 CV 01901 (PCD)
- *Bristol Technology, Inc. v. Microsoft Corporation*
U.S. District Court, District of Connecticut, C.A. No. 398-CV-1657 (JCH)
- *America Online, Inc. v. AT&T Corporation*
U.S. District Court, Eastern District of Virginia, C.A. No. 98-1821-A
- *Forty-Niners Truck Plaza, Inc. v. Unocal Corporation*
Superior Court in and for the County of Sacramento, California, Case No. 531830
- *Dade Behring Marburg GmbH, Syva Company v. Biosite Diagnostics, Inc.*
U.S. District Court, Southern District of New York, C.A. No. 97-501 MMS

- *CBS Broadcasting Inc., et al., v. PrimeTime 24 Joint Venture*
U.S. District Court, Southern District of Florida, C.A. No. 96-3650-CIV-Nesbitt
- *Becton Dickinson and Company v. Syntron Bioresearch, Inc.*
U.S. District Court, Southern District of California, C.A. No. 97-CV-1634K (POR)
- *Hard Rock Café International (USA), Inc., (f/k/a Rank Licensing, Inc.), v. Peter A. Morton and Hard Rock Hotel, Inc.*
U.S. District Court, Southern District of New York, C.A. No. 97-CIV-9483 (RPP)
- *Wang Laboratories, Inc. v. FileNet Corporation*
U.S. District Court, District of Massachusetts, C.A. No. 94-12141
- *Neles-Jamesbury, Inc. v. Fisher Controls International, Inc. and Fisher Service Company*
U.S. District Court, District of Massachusetts, C.A. No. 94-40200
- *The Toro Company v. White Consolidated Industries, Inc. and WCI Outdoor Products, Inc.*
U.S. District Court, District of Minnesota, C.A. No. 4-95-656
- *Polo Ralph Lauren, L.P., v. The Magnin Company, Inc.*
American Arbitration Association Commercial Arbitration Tribunal, Case No. 74-181-1094-96
- *Roll Systems, Inc. v. Wallace Computer Services Inc.*
U.S. District Court, District of Massachusetts, C.A. No. 94-10372-MEL
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U.S. District Court, Eastern District of Virginia, C.A. No. 96-656-A
- *Century Wrecker Corporation v. Chevron, Inc.*
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- *Minnesota Mining and Manufacturing Co. v. Avery Dennison Corp.*
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- *Minnesota Mining and Manufacturing Co. v. Norton v. Bay State Abrasives Co.*
U.S. District Court, District of Delaware, C.A. No. 89-533 (JJF)

AFFIDAVITS

- Expert Report in connection with *Union Carbide Chemicals & Plastics Technology Corp. and Union Carbide Corp. v. Shell Oil Company, Shell Chemical Company and CRI Catalyst Company* October 2000, U.S. District Court, District of Delaware, C.A. No. 99-274 (SLR).
- Expert Report in connection with *Carl Zeiss Jena GmbH, Carl Zeiss Inc., v. Bio-Rad Laboratories, Inc., Cornell Research Foundation Inc., and Bio-Rad Laboratories, Inc., Cornell Research Foundation Inc., v. Carl Zeiss Jena GmbH, Carl Zeiss Inc.*, May 2000 — U.S. District Court, Southern District of New York, (98 CIV. 8012 RCC (DFE)).
- Expert Report in connection with *Omniglow Corporation v. Unique Industries, Inc.*, November 1999 — U.S. District Court, District of Massachusetts, (C.A.No. 99-30052-MAP).
- Expert Report in connection with *Joseph E. Seagram & Sons, Inc., The Seagram Company Ltd. and JDC S.A. de C.V. v. St Maarten Spirits, Ltd., and St. Maarten Spirits Limited*, August 1999 — Superior Court of the State of California, for the County of Los Angeles, (No. BC 191 681).
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- Expert Report in connection with *America Online, Inc. v. AT&T Corporation*, March 1999 — U.S. District Court, Eastern District of Virginia, C.A. (98-1821-A).
- Expert Report in connection with *Ashraf M. Dahod v. Bay Networks, Inc. and LanCity Corporation, Inc.*, September 1998 — U.S. District Court, District of Massachusetts, C.A. (No. 96-11907 REK).
- Expert Report in connection with *Harris Corporation, et. al v. Atmel Corporation*, June 1998 — U.S. District Court, Eastern District of Virginia, C.A. (No. 98-98-A).
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- Supplemental Expert Report in connection with *Neles-Jamesbury, Inc. v. Fisher Controls International, Inc. and Fisher Service Company*, October 1997 — U.S. District Court, District of Massachusetts, C.A. No. 94-40200).

- Expert Report in connection with *Neles-Jamesbury, Inc. v. Fisher Controls International, Inc. and Fisher Service Company*, August 1997 — U.S. District Court, District of Massachusetts, C.A. No. 94-40200.
- Expert Report in connection with *The Toro Company v. White Consolidated Industries, Inc. et al.*, May 1997 — U.S. District Court, District of Minnesota, C.A. No. 4-95-656.
- Supplemental Expert Report in connection with *Century Wrecker Corporation v. Chevron, Inc.*, May 1997 — U.S. District Court, Western District of Pennsylvania, C.A. No. 89-1452.
- Supplemental Rebuttal Expert Report in connection with *Polo Ralph Lauren, L.P. v. The Magnin Company, Inc.*, May 1997 — American Arbitration Association Commercial Arbitration Tribunal, C.A. No. 74-181-1094-96.
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- Affidavit in Support of Ag-Chem Equipment Co. Inc. and Soil Teq, Inc.'s Motion For Summary Judgment, August 1996 — U.S. District Court, District of Minnesota, C.A. No. 4-93-1228.
- Expert Report and Supplemental Expert Report in connection with *Roll Systems, Inc. v. Wallace Computer Services Inc.*, July 1996 and December 1996 — U.S. District Court, District of Massachusetts, C.A. No. 94-10372-MEL.
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- Expert Report in connection with *Century Wrecker Corp. v. Chevron Inc.*, March 1996 — U.S. District Court, Western District of Pennsylvania, C.A. No. 89-1452.
- Expert Report in connection with *Medtronic v. Pacesetter and St. Jude Medical Inc.*, February 1996 — American Arbitration Association.
- Expert Report in connection with *Cedar Ridge Trailer Sales et al. v. National Community Bank of New Jersey et al.*, December 1995 — Superior Court of New Jersey, C.A. No. BER-L-09277-92.
- Expert Report in connection with *Federal Trade Commission v. New Balance Athletic Shoe, Inc.*, 1995 — Boston, Massachusetts, File No. D9268.
- Expert Report in connection with *Minnesota Mining and Manufacturing Co. v. Avery Dennison Corp.*, 1995 — U.S. District Court, District of Minnesota, C.A. No. 4-93-1070.
- Expert Report in connection with *Minnesota Mining and Manufacturing Co. v. Norton v. Bay State Abrasives Co.*, 1994 — U.S. District Court, District of Delaware, C.A. No. 89-533 (JJF).

PUBLICATIONS AND PRESENTATIONS

"What Drives Consolidation?" Presented at the 28th Semiannual Members Meeting MIT/CRE, Cambridge, MA, May 14, 1998.

"Proving Unilateral Effects and Efficiencies in Merger Cases: A Demonstration." Presented at the 46th Annual ABA Antitrust Meeting, Washington, DC, April 1, 1998.

"Creating An Effective Diversion: Evaluating Mergers With Differentiated Products," *Antitrust*, Spring 1997.

"Economic Battles in the Antitrust Wars: Network Industries and Their Relevance to Antitrust in the Computer Industry." Presented at the Washington State Bar Association's Thirteenth Annual Antitrust, Consumer Protection and Unfair Business Practices Conference, November 8, 1996.

"Differentiated Products: New Tools for New Methods." Presented at NERA's Seventeenth Annual Antitrust & Trade Regulation Seminar, Santa Fe, NM, July 5, 1996.

"Market Definition Under Price Discrimination" (with J. A. Hausman and G. K. Leonard), *Antitrust Law Journal*, Vol. 64, No. 2 (Winter 1996).

"Learning-by-Doing in the Context of Antitrust Analysis" (with J. Hausman), April 1995.

"An Economic Analysis of ATM Surcharging," prepared for Southeast Switch Inc., October 5, 1995.

"Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt et al.), *Productivity Issues in Services at the Micro Level*, ed. Zvi Griliches and Jacques Mairesse, Kluwer Academic Publishers, 1993.

"Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt et al.), *Journal of Productivity Analysis*, 4, 127-144, 1993.

"Rail Costs and Capital Adjustments in a Quasi-Regulated Environment" (with Friedlaender et al.), *Journal of Transport Economics and Policy*, 131-152, May 1993.

"Deregulation, Mergers and Cost Savings in Class I U.S. Railroads, 1974-1986" (with Berndt et al.), *Journal of Economics and Management Strategy*, Vol. 1, No. 2, 1992.

"Observations on Pre-Trial Bargaining Models," MIT Mimeo, September 1989.

"The Deregulation of the U.S. Rail Industry: Efficiency and Equity in Attaining Rail Viability," Ph.D. Dissertation, Department of Economics, MIT, 1989.

"Achieving Cost Efficiency Through Merger: Evidence from the U.S. Rail Industry," Presented at the American Economic Association Symposium on Mergers and Acquisitions, New York, December 29, 1988.

APPENDIX A

Detailed Specification of the Source Competition Analysis

We analyzed CN/WC participation (as intermediate, originating, or terminating carrier) in flows of a product to a DBEA, and divertible capacity for the product/DBEA pair. ALK Technologies, Inc. applied the 50/10 screen and performed the divertibility study pursuant to my specifications.

Data Utilized: The data utilized to complete the source competition analysis included shipment information from the 1999 STB Waybill Sample. Initially, total rail movements (in tons, carloads, and dollars) were collected by ALK. Product-level data were collected at the 7-digit STCC code level¹ for each destination BEA² (henceforward "DBEA") for traffic in which

¹For the purposes of this analysis, I assumed that 7-digit STCC level product codes represented a logical framework for the competitive analysis. This relatively narrow product grouping does not account for the potential that receivers of some products may have to substitute products classified under one 7-digit code for products classified under another 7-digit code. This product definition therefore may not address specifically some source-based competition where the products delivered by CN and WC are not directly substitutable but interact more indirectly. However, in any such instance, taking into account the other product would likely reduce the CN and WC shares of that more broadly defined product market. In any event, when we move beyond identifying potential problem flows under the 50/10 screen to examining the post-merger constraints on those flows, this specific approach to product definition is highly conservative: I do not consider any movements of any products other than those in the subject 7-digit STCC code to be potentially substitutable in disciplining the combined firm's conduct in each relevant product/DBEA pair.

²I selected a BEA-based regional classification over a station-based classification (multiple stations are typically found within each BEA). First, it is highly likely that products delivered into a common BEA (but to different stations) compete with one another on a downstream basis. For example, Oriented Strand Board ("OSB") (a wood-fiber based building product) delivered to warehouses located at different stations will ultimately face reshipment to final customers. To the extent that these warehouses compete for significant business against one another, the delivered prices of OSB across these stations will be tightly linked (though not necessarily identical). Given that BEAs are defined to identify units of common economic activity, the BEA-based approach is appropriate in this regard. Also, given the general proximity of stations within a BEA, and the low incremental cost of transporting products on rail once they are loaded and moving, rail traffic will travel significant incremental distances to obtain relatively small incremental delivered prices. Again, this implies that delivered prices across regionally-clustered stations will be very closely linked. Further, a narrower geographic focus would have identified fewer CN and WC flows as warranting further analysis. For purposes of screening, therefore, the BEA approach is conservative.

CN or WC participated.³ For each product/DBEA pair for which at least one of CN or WC participated in delivering volume, the total rail volumes terminating⁴ at that DBEA were also collected, to determine the total share of delivered volumes in which CN and WC participated.⁵

Identifying Candidates For Further Analysis: I sought to capture product/DBEA pairs where CN and WC each currently participate in the shipments of a non-trivial portion of total deliveries into the DBEA and where the combined firm will possess a significant share of this traffic. These shares were determined using three techniques: participating share, originating share and terminating share.

For the purposes of this report, I defined a product/DBEA pair to be a candidate for a more complete competitive analysis with respect to traffic terminating in a BEA for which each of CN and WC: 1) originated, terminated, or interchanged (henceforward "participated" in) 10% or more of all delivered volume, and if the combined participating share calculated on this

³In this context "participation" includes all traffic where CN or WC is the initial rail carrier on the move, handles the traffic in an intermediate role, or terminates the traffic at the DBEA. Specific analyses with respect to originated and terminated traffic are also considered. As the Waybill Sample identifies only railroads receiving revenues as a long haul carrier, "originating," "terminating," and "participating" do not include carriers participating in a movement that receive revenue only from switching or haulage charges.

⁴Multi-carrier rail movements where participating railroads bill separately for their services (so-called "Rule 11" traffic) result in at least two waybills, one with an apparent termination and one with an apparent origin, at the point of interchange. Neither, either or both of these waybills may be captured in the Waybill Sample. Some origins and terminations in our analysis are therefore not true origins and terminations of rail movements, but rather interchanges of Rule 11 traffic.

⁵For purposes of the analysis, I assume that in every instance where CN and WC provide transportation services for the same product destined for a DBEA, the products being delivered by the two railroads are perceived as substitutable by some identifiable set of customers. Although I believe it to be generally accurate for most of the products under consideration, it bears mention that, for purposes of the present analysis, this is a conservative assumption. It is possible (and indeed likely) that in some instances, the products delivered by the two railroads – while being classified in the same 7-digit STCC – are not reasonable substitutes for one another. Where that is the case, any concern for a reduction in competitive rivalry between CN and WC evaporates, because no rivalry existed in the first place.

basis without double-counting would have been 50% or more of total delivered volume;⁶ or 2) originated 10% or more of the total delivered carloads of a product/DBEA pair in 1999, and if the combined originating share of the two railroads was 50% or more; or 3) terminated 10% or more of the total delivered carloads of a product/DBEA pair in 1999, and if the combined terminating share of the two railroads was 50% or more. For example, for STCC code 0113215 (corn and maize products excluding popcorn) delivered into the Chicago-Gary-Kenosha BEA (#64), CN originated 29% of all carloads (7,092 delivered cars relative to DBEA total of 25,252 cars), while WC originated 28%. This product/DBEA pair is a candidate for further analysis under the origination screen, since CN and WC each accounted for 10% or more of originations into the DBEA of product 0113215, and the combined share of the two railroads exceeds 50% (57%).

A generic illustration of the participation screen would be as follows: where 100 carloads of a 7-digit STCC commodity terminate in a BEA, and (a) CN originated 35 of them and interchanged 15 of those carloads with WC (and 20 carloads with another carrier for termination at the same BEA), while (b) WC originated no volume, but terminated the 15 carloads of the CN, and (c) an additional 30 carloads is handed to WC by another carrier. In this instance, CN's participating share would be 35%, WC's participating share would be 45%,

⁶As I have already noted in the main body of my Verified Statement, in order to avoid double-counting under the participating-railroad screen, the combined share had to be at least 10 percentage points higher than the greater of either railroad's participation share.

and the combined participation share (with no double-counting of the 15 carloads that CN/WC interchange with each other) would be 65%, and therefore subject to further analysis.⁷

⁷Note that this example would not be captured as a candidate for further analysis if only the originating and terminating screens were used, since WC originates no traffic and CN delivers no traffic to the final DBEA. Conversely, the originating screen would identify a flow not identified in the participating screen in the following example involving interchange between CN and WC: a product/DBEA pair with 100 carloads, where CN originates 40 carloads that it also terminates; WC originates 10 carloads that it interchanges to CN for termination, and other railroads solely handle the remaining 50 carloads. The originating screen would identify this flow, because CN has a 40% share of originations, WC has a 10% share, and their combined share is 50%. The participating screen, however, would not identify this flow. As participating railroads, CN has a 50% share, WC has a 10% share, and their combined share avoiding double-counting of WC's 10 carloads is 50%. The participation screen does not identify this flow because the combined CN/WC share is not 10 percentage points greater than the larger of their individual participation shares.

Computing Critical Loss

The critical loss depends on the marginal contribution that the combined firm loses on the volumes that it no longer sells as the result of some customers taking their business elsewhere (or simply curtailing their demand) when the combined firm attempts a price increase. As an illustrative example, consider a merger in which the combined firm would earn \$100 in revenue for each car delivered and incur \$30 in marginal costs per car, for a per-car contribution of \$70 per car. The combined firm will move 1,000 cars if it keeps its per-car price at \$100. Total revenue will equal \$100,000, and total contribution will equal \$70,000 $((\$100/\text{car} - \$30/\text{car}) \times 1,000 \text{ car})$. Assume the combined firm considers whether to raise its price by \$5 per car. If the combined firm loses 100 cars as a result of the price increase, then its total contribution under the price increase is $((\$105 - \$30) \times 900 \text{ cars}) = \$67,500$. Thus the posited anticompetitive (*i.e.*, non-cost based) price increase will not be in the profit-maximizing interest of the firm, since it will lose more than the critical loss in volumes as a result of the price increase. If the volume loss were only 50 cars as a result of the price increase, then contribution under the price increase would be $((\$105 - \$30) \times 950 \text{ cars}) = \$71,250$. In this instance, the volume loss resulting from the price increase is below the critical loss, and the combined firm would have the incentive to raise prices. The following formula determines the critical loss for a 5% price increase as a function of the percentage profit level (denoted by π):

$$\text{Critical Loss (expressed as a \% of total volume)} = .05 / \pi$$

In the example provided above, the critical loss volume is $.05/0.7$ or 7.14% of total cars sold, in other words $.0714 \times 1,000 \text{ cars} = 71.4 \text{ cars}$. If the combined firm in the above example believes it will lose more than 71.4 cars of business (7.14% of its present volume) in response to a 5%

price increase, then the combined firm will not increase price anticompetitively as a result of the merger.

In my analysis, I use a range of plausible marginal contribution rates per car for rail services to determine a range of critical loss values for the combined CN/WC, post-transaction. As discussed in my detailed findings concerning each product/DBEA combination, the volumes that a combined CN/WC would have to lose in order to make a significant price increase unprofitable are very small. I therefore use marginal contribution rates of 50% and 80%. These are the assumed contribution margins on small incremental volumes, which generally do not require a new train or, ordinarily, an additional locomotive.⁸ Given that these volumes represent additional carloads appended onto existing mixed-manifest trains, the avoided costs associated with not carrying these additional cars are very low, probably below 10% of revenue (implying a marginal contribution rate in excess of 90%). Avoided costs are indeed limited to direct fuel savings and, in some instances, car leasing/rental (or equivalent opportunity cost) savings.⁹ These percentages are different from ordinary revenue-to-variable cost ratios, which identify margins on larger aggregations of traffic, and therefore reflect more of the overall costs

⁸ The only exception to the *de minimis* nature of the critical loss volumes relates to corn. The critical loss volumes in corn are approximately 1,400 carloads, which, due to the nature of corn transportation and handling, could result in a reduction of about 14 unit trains per year. Thus the avoided costs of not delivering these tons might be somewhat higher. Nonetheless, I expect that the incremental profit foregone on lost corn transportation would be quite high, well in excess of 50%. Also, given the massive availability of divertible capacity in corn, my finding that there can be no anticompetitive price increase in corn transportation is essentially independent of the assumed marginal profitability rate (and its associated critical loss volume).

⁹ In this context, it bears noting that *total* train operating expenses were 24% of rail freight revenue for Class I railroads in 1999 (Form R-1, Schedule 410, lines 419 and 13). Most of these operating expenses would not be incremental in the event a few cars were removed from a mixed-manifest train. Thus, the avoided costs associated with the carloads comprising the critical loss volume would likely be considerably lower than 24%, implying a marginal contribution rate well in excess of 76%.

of railroad operations and correspondingly smaller contribution margins.¹⁰ I then determine whether sufficient alternative sources of the relevant product are available to customers at the DBEA so that the combined firm would find an anticompetitive price increase unprofitable. For example, for STCC code 2499110 (OSB), the combined firm, if it retains all of its current volumes, will handle approximately 4,200 cars into the Chicago BEA at current prices. Assuming a profit rate of 70%, the combined CN/WC would not undertake a 5% price increase if it expected that it would lose $(0.05 / 0.7) \times 4,200 = 300$ cars of traffic, and the increase would be unprofitable if it tried to do so.

¹⁰ I also spoke with ALK about the nature of the "avoided" cost exercise associated with a critical loss analysis. ALK indicated that a 20-50% (measured as a percent of net revenue) avoidable cost rate – implying a 50-80% marginal contribution rate – was highly conservative in that the likely avoidable cost would be considerably lower (thereby implying a higher lost marginal contribution rate and correspondingly lower critical loss volume), even for considerably larger incremental volumes than those under consideration in this analysis.

Rail Divertible Capacity

Exhibit 5 provides the framework under which I derive divertible capacity and its various forms. Here (for simplicity), three railroads (merging railroad 1, merging railroad 2, and railroad 3) are delivering the relevant product into destination DBEA1, each from a distinct origin (OBEA1, OBEA2, and OBEA3, respectively). My focus, at present, is on railroad 3 (not involved in the hypothetical merger between railroads 1 and 2). Under current market conditions, railroad 3 is transporting the relevant product to both DBEA1 and another destination, denoted DBEA2. Note that both the railroad and its originating customer at OBEA3 find it in their profit maximizing interest to ship volumes to two locations (DBEA1 and DBEA2).

The fact that the customer at OBEA3 and railroad 3 are willing to ship to both locations provides important information. At the margin (that is for the last shipment to both destinations), railroad 3 and the customer must earn the same profits on both deliveries. To see why this is so, consider a situation where the profits at DBEA1 for the railroad and its originating customer were higher than at DBEA2. In this situation, railroad 3 and the customer would agree to shift some of the volume currently destined to DBEA2 over to DBEA1, where they could agree to divide up the additional profits earned so that railroad 3 and its customer both earned additional profits. This diversion of volumes from one destination to the other would continue until the marginal profitability of traffic was equal across the two destinations.¹¹

¹¹Note that it is possible that railroad 3 and the customer would find that it was always more profitable (at current prices) to ship to DBEA1. In this instance, one should observe no volume destined for DBEA2 in the first place, thus violating the construct of the example.

Now consider the rest of the schematic provided in Exhibit 5. Say the combined railroad (the amalgamation of merging railroads 1 and 2) was to unilaterally raise the delivered price of the relevant product into DBEA1 by 5%. Receivers at DBEA1 would seek alternative sources of supply at some lower delivered price. Railroad 3 is already serving customers in DBEA1. Customers at DBEA1 would seek to acquire additional volumes from railroad 3 (and its originating customer at OBEA3) for some price below the new, higher price offered by the combined railroad. Would railroad 3 and its customer at OBEA3 have an incentive to provide additional volume at DBEA1? The answer is yes. Railroad 3 and its customer at OBEA3 would be able to provide additional volume at DBEA1 at a price that is higher than it currently earns at OBEA1. They would need only to undercut the merged firm a small amount to secure additional business (say by offering a price 2% below the new higher price being charged by the merged firm).

Where would railroad 3 source this volume? The shipper at OBEA3 may have some unused capacity, so that it could increase production and sell the increase profitably at the new higher prices available at DBEA1. This is plausible, because much of the time industries operate at least slightly below capacity. For example, a significant portion of the relevant products at issue in the candidate 50/10 DBEAs is forest products (such as lumber, wood particle board, and OSB). Production can be expanded relatively readily in the short-medium run by accelerating forest harvesting, and/or more fully utilizing board-forming equipment.

I chose to study a different potential shift in sources by examining rail movements of the same product (the same 7-digit STCC) or rail movements of products with similar transportation characteristics (the same 4-digit STCC) from origins with competitive rail routes to the BEA. In Exhibit 5, railroad 3 is already moving the 7-digit STCC commodity to

DBEA1. If a combined CN/WC instituted a significant price increase, railroad 3 and the shipper at OBEA3 would divert volume of the 7-digit STCC now serving DBEA2 into the more profitable opportunities afforded to them at DBEA1. This was our "direct" divertibility analysis. It is direct not in the sense that it is a stronger competitive constraint than the "supplemental" analysis, discussed below. Rather, where a railroad is already shipping the same STCC-7 product to the same DBEA, that simply was a logical place to begin the analysis.¹²

It is also possible that the incentives created by the higher prices instituted by the combined firm may create an incentive for railroad 3 to begin shipping additional volumes into DBEA1 even where it had not done so historically. The price flexibility provided by a price increase instituted by the combined firm may render shipments to DBEA1 profitable for railroad 3 and its customer at OBEA3 where such shipments had not been profitable otherwise. The additional volume that originates from locations that currently do not serve a specific DBEA may well represent "supplemental divertible capacity" if the posited higher prices create profitable opportunities at DBEA1 where none existed previously.

¹²One might question whether such a redirection might harm customers at these other destinations as volumes are shifted away from them in response to the purported price increase at the destination under study. First, given that the volumes would be redirected to defeat the price increase if the price increase were undertaken, the railroad serving the destination under study will have no incentive to actually increase prices. In applied economic strategic interaction analyses such as the one under consideration here, it is the *credible threat* of such a movement that disciplines prices; in equilibrium, no such price change (and no such shifting of volumes) takes place and no customer at some other destination is required to seek alternative sources. Second, if the redirection to the 50/10 DBEA were to occur, the customers at these other destinations would seek to bid volumes away from still other destinations, including (quite likely) destinations other than those that are candidates to discipline the original destination under study. If so, then a "domino-effect" would ensue, thereby tightly linking the prices of all delivered products across all destinations. This would imply a national (or at the very least a super regional) market. In this context, the proposed combination of CN and WC would not involve any significant accumulation of rail traffic under common control, and therefore could not adversely affect competition. Finally, these concerns are further mitigated where the available divertible volumes are drastically higher than the critical loss and come from multiple DBEAs (thus the impact of diverted critical loss volumes from any single DBEA has a *de minimis* impact on competition at those DBEAs).

For the purposes of this analysis, I considered various sources of divertible capacity for a candidate 50/10 product/DBEA. These sources are depicted schematically in Exhibits 5 and 7 and algorithmically in Exhibits 6 and 8. Initially, I had analysts at ALK identify all railroads that originated relevant STCC code traffic destined for the 50/10 DBEA and the various OBEAs of that traffic (OBEA3 in Exhibit 5). ALK then identified all shipments of the relevant 7-digit STCC originated by the same railroad (railroad 3) out of this set of identified OBEAs that was destined for DBEAs other than the 50/10 DBEA under analysis (these other DBEAs are depicted schematically as DBEA2 in Exhibit 5). These volumes were treated as "direct divertible capacity" ("DDC") in evaluating the potential for the combined CN/WC to raise the price of delivered products into the relevant 50/10 DBEA. If railroad 3 used CN/WC to originate/terminate/interchange the shipment of the 7-digit STCC between OBEA 3 and DBEA1 but there is an alternative route between OBEA3 and DBEA1 that is less than 1.35 times the weighted average of railroad 3's route over CN/WC, then the shipment is also considered DDC.¹³ The specifications for how ALK determined DDC volumes are provided in Exhibit 6.

I also evaluated the potential for supplemental divertible capacity ("SDC") to arise from OBEAs not currently providing the particular 7-digit STCC product into the 50/10 DBEA. This analysis was necessary in those cases where CN and WC originated 100% of the volume

¹³Thus, I excluded any such divertible capacities if they required access to the CN or WC system for any part of their route into the 50/10 DBEA, *unless* the divertible capacity could find its way into the DBEA through some alternative, non-circuitous route. In this context, circuitry is defined as a total haul distance greater than 135% of the observed weighted average distance of movements of that commodity to that DBEA on routes on which CN or WC is the originating carrier, a terminating carrier, or an intermediate carrier. See Exhibit 6 for more detail. Mr. Bottorff confirmed this approach, as he discusses in his verified statement. Of total divertible capacity (DDC and SDC), 68% would travel less distance on a route not involving CN or WC than on the CN or WC route; 93% would travel no more than 10% further; and 95% would travel no more than 25% further.

of a product into a DBEA, and I also had it performed where the ratio of available DDC to the critical loss did not meet my conservative requirement of 10. I applied two screens to identify SDC volumes. First, I included all volumes of the 7-digit product originating from an OBEA and destined to BEAs other than the 50/10 DBEA under consideration, if a railroad was originating products in the same 4-digit STCC from the OBEA into the 50/10 DBEA without using CN/WC to originate/terminate/interchange the shipment. If the 4-digit STCC shipment used CN/WC to terminate/interchange the shipment, I determined whether that railroad had an alternative route to the 50/10 DBEA whose distance was not more than 1.35 times the weighted average of that railroad's 4-digit STCC routes over CN or WC, as in the algorithm for DDC. The schematics of this method are depicted in Exhibit 7. I reasoned that products in the same 4-digit STCC exhibit similar transportation characteristics (in terms of handling requirements and value/weight considerations). These OBEAs offered economically attractive sources from which a railroad could divert volumes of the 7-digit STCC product to the 50/10 DBEA, since other products with similar transportation characteristics were already being shipped by the railroad into the 50/10 DBEA. The specifications for this algorithm are provided in Exhibit 8.

Second, I included additional volumes under this supplemental divertible capacity category if the other railroad was originating the 7-digit STCC from an OBEA to DBEAs other than the 50/10 DBEA, and had a route from the OBEA to the 50/10 DBEA that is less than the observed distances of the routes in which CN or WC participated in moving the same 7-digit product into the 50/10 DBEA.¹⁴ This analysis (in effect) draws a rail-distance-based radius

¹⁴I sought to disqualify long-distance shipments of very small volumes in determining the practical shipping distance of the relevant commodity. To this end, ALK determined the shipping distance of the 90th percentile carload of the movements in which CN or WC participated and used this distance as the relevant screen. For example, if 200 carloads of a given commodity were shipped by WC and/or CN into the DBEA in a given year, ALK captured the distance traveled by the 180th most-distant carload.

around the DBEA and classifies any volume originating in this area as divertible volume, subject to the ability of other railroads to access the DBEA on a route that is no longer than the routes in which CN or WC participated.¹⁵ The algorithm for this 90th percentile screen is described in Exhibit 8.

If these available "divertible capacities" (either direct, supplemental, or both) into a 50/10 DBEA for the relevant product significantly exceeded the "critical loss" volume required to discipline pricing by the combined railroad, I determined that no competitive concerns would arise as a result of the proposed combination of CN and WC from a reduction in source-based competition on the relevant product into the 50/10 DBEA. I display our findings in Exhibit 3 and discuss them in the text of my verified statement.

¹⁵Again, I excluded all volumes that would require access to the CN and WC system in order to qualify as supplemental divertible capacity, unless the volumes could reach the 50/10 DBEA in a non-circuitous fashion without accessing CN or WC.

APPENDIX D

Truck Divertible Capacity—Method

We identified truck divertible capacity using a methodology analogous to the methodology that we used for rail. Reeble Associates performed the truck divertible capacity analysis pursuant to my specifications. We identified the volumes of the relevant 4-digit STCC commodity that are moving by truck to destinations other than the 50/10 DBEA from truck origins with competitive truck routes to the 50/10 DBEA. To determine that a truck route from an origin to a 50/10 DBEA was competitive, we simply limited our search for truck origins to those that are no further by highway from the 50/10 DBEA than the weighted average distance of 1999 truck movements of the relevant 4-digit STCC to the 50/10 DBEA. Because the Reeble data is at a 4-digit STCC level, we then estimated truck divertible capacity at the 7-digit STCC level as follows: we determined the relevant 7-digit rail movement to the 50/10 DBEA as a percentage of rail movements of the 4-digit STCC and multiplied this percentage by the 4-digit STCC truck divertible capacity.

Illustration of One-Lump Analysis

Consider a highly simplified example where a single railroad (railroad 1) acts as the sole provider of rail access between producer A located at origin OBEA A, and customer C located at destination DBEA C. (See top panel of Exhibit 9.) It costs producer A \$30 to produce its product that is demanded by customer C. Customer C has another source of the relevant product (from a location other than OBEA A), but its delivered cost to customer C is \$100. In this instance, railroad 1 is in a position to charge \$70 for transportation (subject to regulatory constraints), thereby capturing the entire economic surplus represented as the gains to trade between product A and customer C.

I extend the analysis to involve two origins (OBEA A and OBEA B) in the bottom panel of Exhibit 9. At both origins the producers produce product at \$30 per unit. Railroad A serves only OBEA A and railroad B serves only OBEA B. Neither road owns tracks that run to destination DBEA C (I also assume for clarity that railroads A and B serve no other destinations where there is any significant demand for the product at issue). I also assume that the incremental cost of transportation for railroad A and railroad B from their origins to the point at which they interchange with railroad 1 is \$10. In this instance, railroad 1 will price its transportation services at \$60, once again capturing the entire surplus available. The total cost of transportation for movements of product from OBEA A to DBEA C is \$70 and OBEA B to DBEA C is \$70, as source competition will drive railroad A's and railroad B's price for its segment of the movement to its incremental cost of \$10. The total delivered price paid by customer C will remain \$100, and producers at A and B will earn \$30 in revenue.

Now assume that railroad 1 acquires railroad A. Regardless of the policy the newly merged road takes with respect to railroad B, the price paid by customer C will remain \$100, and the revenue earned by producers will remain at \$30. Even if the merged railroad were to deny railroad B access to customer C, there would be no change in the price paid by customer C or the revenues earned by the producer at Origin A. Importantly, in this scenario the merged railroad has no incremental incentive to deny producer B/railroad B access to customer C as a result of its merger with railroad A.¹⁶ The merged railroad would still have an incentive to use railroad B if its marginal cost for this product/DBEA pair is less than that of the merged railroad A.

¹⁶Note that it might be argued that the merged railroad might seek to shut producer B out of the marketplace at C entirely, thus curtailing supply into C and driving prices up. However, railroad 1 already had the same ability (and, critically, the same incentives) to foreclose producer B from C prior to the merger. Thus, the merger changes nothing.

Exhibit 1
Illustrative Examples of Source-Based Rail Competition

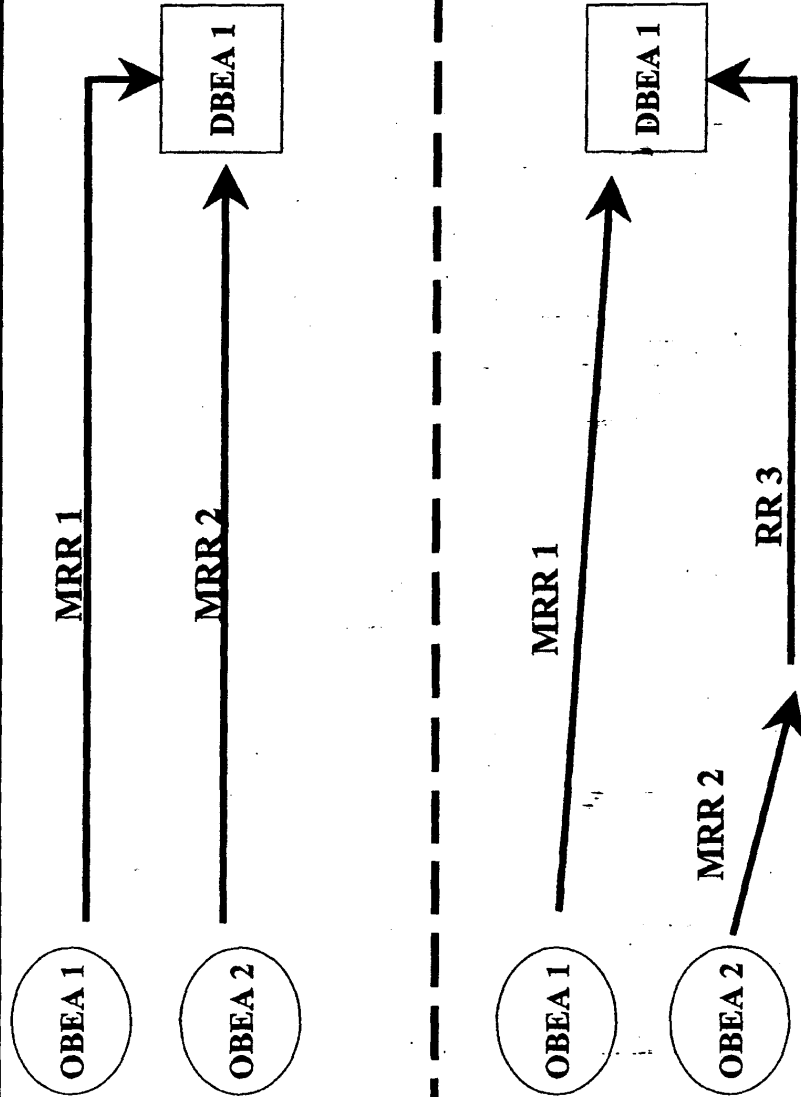


Exhibit 2

Product/BEA Pairs for 50/10 Analysis

PRR 50/10 Analysis of DBEAs

DBEA	Destination BEA Name	STCC7	Commodity Code Name	Carloads by CN/WC
64	Chicago-Gary-Kenosha, Il-In-Wi	0113215	Corn Exc Popcorn	14,384
64	Chicago-Gary-Kenosha, Il-In-Wi	2499110	Oriented Strand Board, Nec	4,200
63	Milwaukee-Racine, Wi	2621115	Newsprint	1,320
100	Des Moines, Ia	2631117	Pulpboard/Fiberboard	1,240
71	Nashville, Tn	2621216	Groundwood Paper, Uncoated	1,200
63	Milwaukee-Racine, Wi	2421184	Lumber Rough/Dressed	1,180
11	Harrisburg-Lebanon-Carlisle, Pa	2621345	Printing Paper Assorted Varieties	1,160
49	Cincinnati-Hamilton, Oh-Ky-In	2611135	Woodpulp	1,040
151	Reno, Nv	2621216	Groundwood Paper, Uncoated	880
57	Detroit-Ann Arbor-Flint, Mi	2621345	Printing Paper Assorted Varieties	876
15	Richmond-Petersburg, Va	2621216	Groundwood Paper, Uncoated	600
109	Duluth-Superior, Mn-Wi	2821245	Synthetic Rubbers	520
27	Augusta-Aiken, Ga-Sc	2621345	Printing Paper Assorted Varieties	520
70	Louisville, Ky-In	2621345	Printing Paper Assorted Varieties	440
170	Seattle-Tacoma-Bremerton, Wa	3295980	Roofing Granules	320
102	Davenport-Moline-Rock Island, Ia-Ill	2819450	Muriatic Acid	280
67	Indianapolis, In	2621345	Printing Paper Assorted Varieties	280
41	Greenville-Spartanburg-Anderson, Sc	2621216	Groundwood Paper, Uncoated	240
2	Portland, Me	2821245	Synthetic Rubbers	200
3	Boston-Worcester-Lawrence-Lowell-Brockton, Ma-Nh	2631119	Pulpboard/Fiberboard	200
104	Madison, Wi	2621345	Printing Paper Assorted Varieties	200
51	Columbus, Oh	3312253	Iron Or Steel Plates	120
75	Tupelo, Ms	2621216	Groundwood Paper, Uncoated	120
6	Syracuse, Ny	3331115	Primary Copper, Alloy, Pig/Slab/Ingot	120
11	Harrisburg-Lebanon-Carlisle, Pa	2621216	Groundwood Paper, Uncoated	120
131	Houston-Galveston-Brazoria, Tx	3612911	Specialty Transformers Nec	120
109	Duluth-Superior, Mn-Wi	2812220	Caustic Soda	80
72	Paducah, Ky	2812410	Caustic Potassium	80
101	Peoria-Pekin, Il	2499110	Oriented Strand Board, Nec	80
51	Columbus, Oh	4024115	Paper Waste/Scrap	80
63	Milwaukee-Racine, Wi	2421195	Lumber Rough/Dressed	80

ORR 50/10 Analysis of DBEAs

DBEA	Destination BEA Name	STCC7	Commodity Code Name	Carloads by CN/WC
108	Wausau, Wi	2611135	Woodpulp	5,600
63	Milwaukee-Racine, Wi	2621345	Printing Paper Assorted Varieties	5,300
68	Champaign-Urbana, Il	2621345	Printing Paper Assorted Varieties	2,280
59	Green Bay, Wi	2821245	Synthetic Rubbers	960
59	Green Bay, Wi	2421184	Lumber Rough/Dressed	640
108	Wausau, Wi	2421184	Lumber Rough/Dressed	520
105	La Crosse, Wi-Mn	2499610	Wood Particle Board	440
59	Green Bay, Wi	2432158	Veneer/Plywood/Built Up Wood	320
63	Milwaukee-Racine, Wi	2621216	Groundwood Paper, Uncoated	320
59	Green Bay, Wi	2499610	Wood Particle Board	280
60	Appleton-Oshkosh-Neenah, Wi	2621990	Paper Nec	240
59	Green Bay, Wi	2499110	Oriented Strand Board, Nec	200
108	Wausau, Wi	4611110	Misc. Mixed, Tofc	200
59	Green Bay, Wi	2411115	Sawlogs	180
59	Green Bay, Wi	2813320	Carbon Dioxide	160
108	Wausau, Wi	2499610	Wood Particle Board	160
2	Portland, Me	4611110	Misc. Mixed, Tofc	120
108	Wausau, Wi	2819315	Sulphuric Acid	120
60	Appleton-Oshkosh-Neenah, Wi	3312468	Iron Bars	80
108	Wausau, Wi	1471620	Sulphur Crude	80
72	Paducah, Ky	4021125	Iron/Steel Scrap/Waste	80

PANEL 1: Participating Railroad 50/10 Product/DBEA Pair

Analysis Group/Economics

Exhibit 3

50/10 Product/DBEA Pairs

PANEL 2: Originating Railroad 50/10 Product/DBEA Pairs

Product	Destination	Originating Carloads						Critical Loss Required to Default 8% Price Increase				Direct Divertible Capacity ("DDC")				Supplemental Divertible Capacity ("SDC")			
		Canadian National		Windsor Central		Combined Railroad		AI 50% Marginal Profit (Carloads)	AI 80% Marginal Profit (Carloads)	Rate to Critical Loss Marginal Profit	Rate to Critical Loss Marginal Profit	Carloads	Rate to Critical Loss Marginal Profit	Rate to Critical Loss Marginal Profit	Carloads	Rate to Critical Loss Marginal Profit	Rate to Critical Loss Marginal Profit		
		Carloads	% of Traffic into DBEA	Carloads	% of Traffic into DBEA	Carloads	% of Traffic into DBEA											Bestmatch Destination?	
7-digit STCC Product Description	Destination DBEA ("DBEA")																		
2411133 Woodchip	Winnipeg, WI	1,340	22%	3,760	44%	5,100	49%	No	240	150	22,000	32.25	62.85						
2411134 Pulpwood	Alton/Union, WI	1,200	13%	4,100	43%	5,300	56%	No	530	331	37,056	69.92	111.87						
2411135 Pulpwood	Chippewa-Union, WI	800	20%	1,400	37%	2,200	57%	No	228	140	34,076	158.23	253.16						
2411136 Pulpwood	Green Bay, WI	600	60%	340	34%	940	94%	Yes											
2411137 Pulpwood	Green Bay, WI	340	40%	280	35%	620	80%	Yes											
2411138 Pulpwood	Winnipeg, WI	240	30%	280	41%	520	79%	No	52	33	18,460	342.69	593.31						
2411139 Pulpwood	La Crosse, WI/Mn	120	19%	320	50%	440	69%	No	44	28	4,940	112.27	179.64						
2411140 Pulpwood	Green Bay, WI	40	13%	280	86%	320	100%	Yes	32	20	2,300	68.75	118.00						
2411141 Pulpwood	Adrian/Racine, WI	200	50%	120	30%	320	80%	Yes											
2411142 Pulpwood	Green Bay, WI	80	20%	200	71%	280	100%	Yes	24	15	0	0.00	0.00						
2411143 Pulpwood	Applique-Oakland-Norwich, WI	40	17%	200	83%	240	100%	Yes											
2411144 Pulpwood	Green Bay, WI	40	20%	160	40%	200	50%	Yes	20	13	94,788	4,939.40	7,903.04						
2411145 Pulpwood	Green Bay, WI	120	40%	80	27%	200	67%	No											
2411146 Pulpwood	Green Bay, WI	40	13%	140	47%	180	60%	Yes											
2411147 Pulpwood	Green Bay, WI	80	50%	80	50%	160	100%	Yes	16	10	0	0.00	0.00						
2411148 Pulpwood	Green Bay, WI	40	20%	40	25%	80	100%	Yes	12	8	0	0.00	0.00						
2411149 Pulpwood	Green Bay, WI	120	70%	40	25%	160	100%	Yes	12	8	120	10.00	10.00						
2411150 Pulpwood	Green Bay, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411151 Pulpwood	Green Bay, WI	40	20%	80	40%	120	60%	Yes	8	5	0	0.00	0.00						
2411152 Pulpwood	Applique-Oakland-Norwich, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411153 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411154 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411155 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411156 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411157 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411158 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411159 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411160 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411161 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411162 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411163 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411164 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411165 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411166 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411167 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411168 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411169 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411170 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411171 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411172 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411173 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411174 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411175 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411176 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411177 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411178 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411179 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411180 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411181 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411182 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411183 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411184 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411185 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411186 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411187 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411188 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411189 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411190 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411191 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411192 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411193 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411194 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411195 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411196 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411197 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411198 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411199 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						
2411200 Pulpwood	Winnipeg, WI	40	50%	40	50%	80	100%	Yes	8	5	0	0.00	0.00						

Exhibit 4

PANEL 1: Participating Railroad SO/IO Product/DBEA Pairs

Product	Description	Combined Railroad Originating Offtake	% of Trunk Line	Critical Loss Required to Offset 1% Price Increase (1-4pt ETCC)		1999 Rail 7-4pt Trunk Line Only	Trunk Line of 4-4pt ETCC	1999 Trunk 4-4pt ETCC: use 2010 BREA		Weighted Avg Trunk Line	Ratio of Estimated 7 1-4pt ETCC Trunk 1 4-4pt ETCC Rail Critical Loss		Trunk Invertible Capacity from Origin to End of Weighted Average Trunk Line use 2010 BREA Constant 1% 2010 ETCC: use 2010 BREA
				At 100% Marginal Product (C/Growth)	At 100% Marginal Product (C/Growth)			Trunk Line Only	Trunk Line Only		Estimated 7 1-4pt ETCC (C/Growth)	Estimated 7 1-4pt ETCC (C/Growth)	
2011261	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011262	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011263	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011264	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011265	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011266	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011267	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011268	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011269	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011270	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011271	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011272	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011273	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011274	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011275	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011276	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011277	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011278	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011279	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011280	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011281	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011282	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011283	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011284	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011285	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011286	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011287	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011288	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011289	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011290	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011291	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011292	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011293	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011294	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011295	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011296	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011297	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011298	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011299	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011300	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011301	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
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2011303	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011304	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
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2011307	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011308	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
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2011311	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
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2011315	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011316	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011317	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011318	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011319	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011320	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011321	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011322	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011323	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
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2011325	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011326	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011327	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011328	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011329	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011330	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011331	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011332	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011333	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011334	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011335	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011336	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
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2011340	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
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2011342	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011343	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011344	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011345	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011346	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011347	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011348	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143	866	13,347	30	62
2011349	Chicago, IL 2011 Freeway Corridor	329	100%	21	21	11,500	11,500	143	143</				

PANEL 2: Originating Railroad 50/10 Product/DELA Pairs

[illegible]

*Notes: Estimated 7-day STOC Truck (Carloads) = [(Road 7-day STOC (tonn/haul) 4-day STOC (tonn/haul) 4-day STOC Truck (Carloads)]

Exhibit 5
Schematic Representation of Direct Divertible Rail Capacity

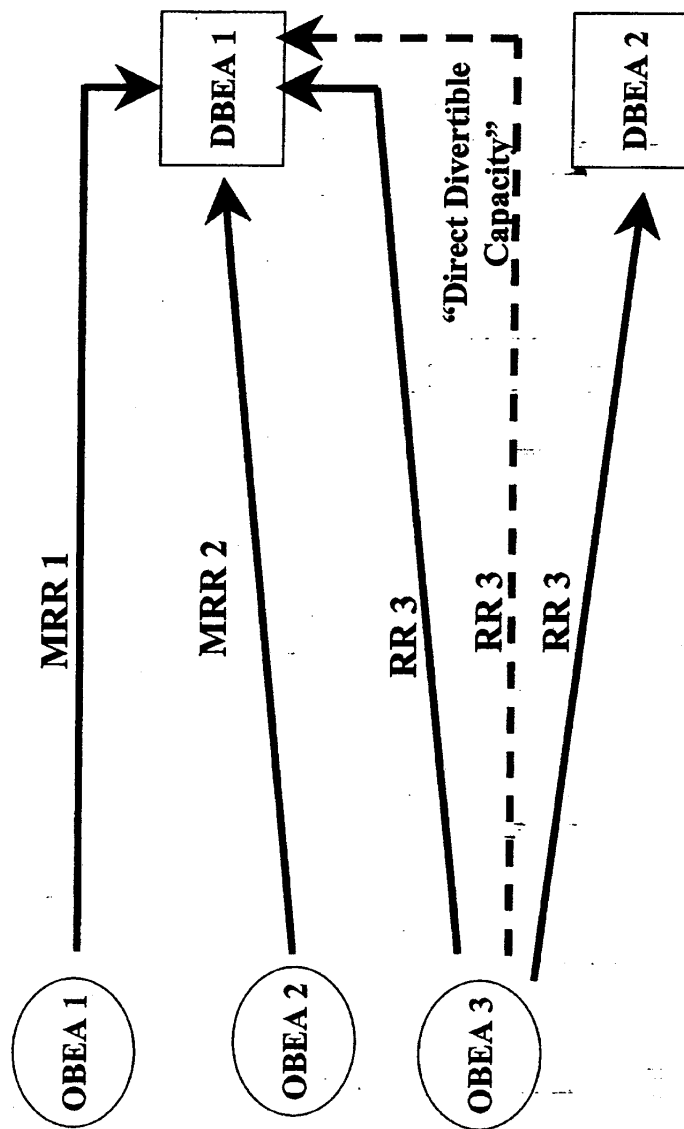


Exhibit 6

Algorithm for Direct Divertible Capacity

For those products where CN-WC originates less than 100% of shipments into DBEA 1, if RR3 ships the product (7-digit STCC) from OBEA 3 to DBEA 1, movements of that product by RR3 to other DBEAs (e.g., DBEA2) are considered Direct Divertible Capacity (DDC) if

- RR3 ships the product between OBEA 3 and DBEA 1 without using CN-WC to originate/terminate/interchange the shipment.

or

- If RR3 uses CN-WC to originate/terminate/interchange the shipment between OBEA 3 and DBEA 1 and RR3 has an alternative route between OBEA 3 and DBEA 1 that is less than 1.35 times the weighted average of RR3's route over CN-WC between OBEA 3 and DBEA 1, then the shipment is considered DDC.

283 B

Exhibit 7 **Schematic Representation of Supplemental Divertible Rail Capacity**

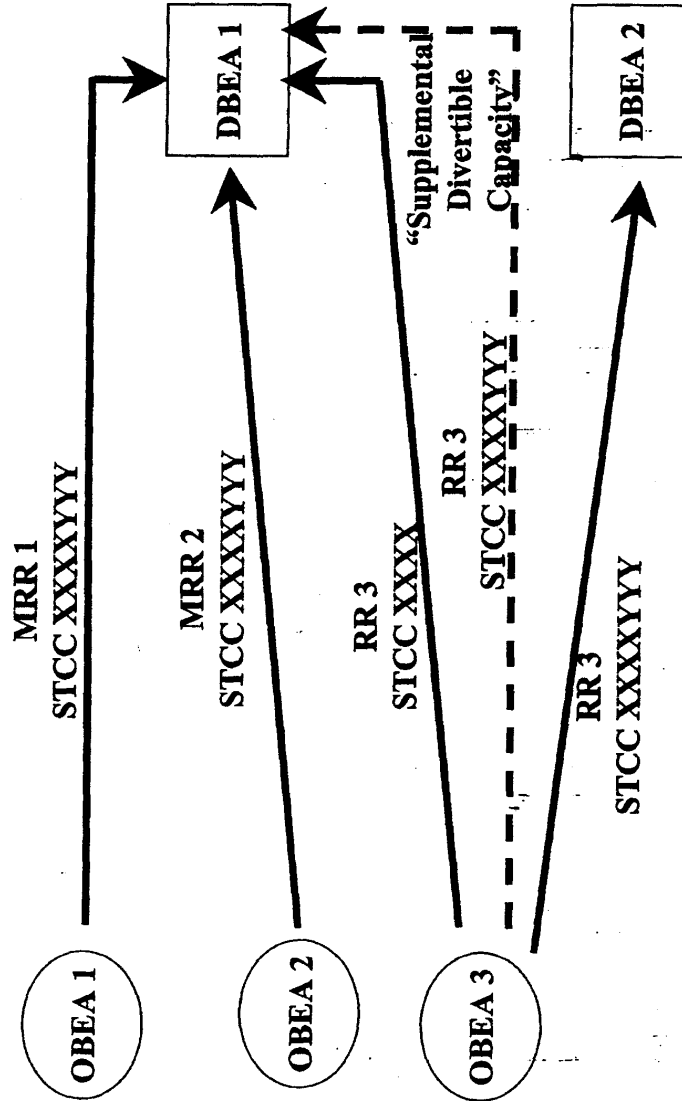


Exhibit 8

Algorithm for Supplemental Divertible Capacity

Movements of a product (7 digit STCC) from OBEA 3 to DBEA 2 in Exhibit 7 are considered Supplemental Divertible Capacity (SDC) for DBEA 1 if

- RR3 ships products in the same 4 digit STCC from OBEA 3 to DBEA 1 on a non-CN-WC route, then the shipment of the product from OBEA 3 to DBEA 2 is considered SDC.

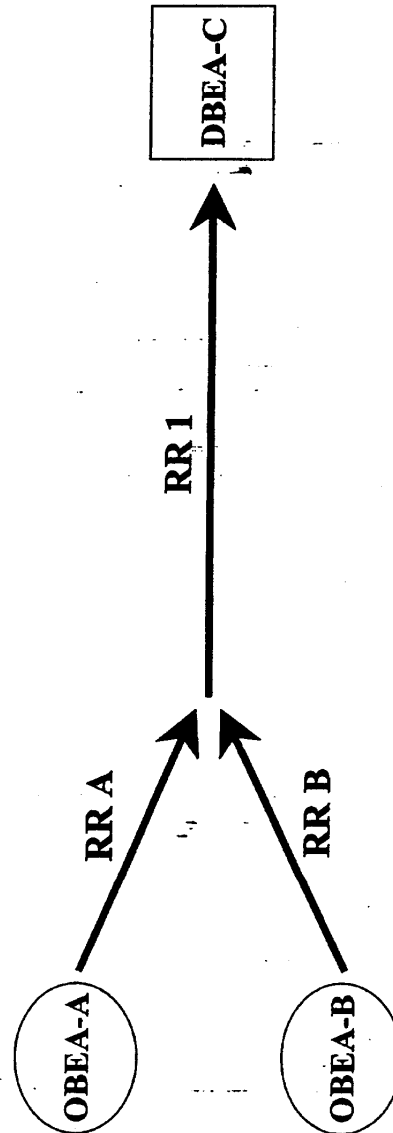
or

- If RR3 uses CN-WC to originate/terminate/interchange the 4 digit STCC shipment between OBEA 3 and DBEA 1 and RR3 has an alternative route between OBEA 3 and DBEA 1 that is less than 1.35 times the weighted average of RR3's route over CN-WC between OBEA 3 and DBEA 1, then the shipment is considered SDC.

or

- If RR3 has an alternative route between OBEA 3 and DBEA 1 that is less than the distance traveled by the 90th percentile-distant carload (e.g., the distance traveled by the 180th most-distant carload of a total of 200 carloads) of CN/WC shipments of the 7 digit STCC to DBEA 1, then the shipment is considered SDC.

Exhibit 9
Example of One-Lump Theory



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VERIFIED STATEMENT
OF
J. EDWARD TERBELL

My name is J. Edward Terbell. I am General Superintendent, Operations, for Canadian National Railway ("CN"), with responsibility for all CN operations in the Chicago Terminal area. I was responsible for developing the Operating Plan (Minor) attached as Exhibit 15 to the Application. The Operating Plan describes the relatively minor operational changes that CN plans to make as a result of its acquisition of the GLT Railroads (DMIR, B&LE, and P&C Dock).

I joined CN in 2001, when my employer, Wisconsin Central Transportation Company ("WC"), was acquired by CN. I began working with WC in 1987 as Chief Engineer Construction, when WC first began operations. I subsequently served as Division Manager, becoming Vice President and General Manager for the Wisconsin Central System in 1993. Prior to joining WC I spent 14 years working for the Chicago and North Western Transportation Company, where I held various positions in the engineering department. These positions included Roadmaster, Manager of Maintenance, and Assistant Division Manager Engineering. Prior to commencing my career in the railroad industry I attended Northwest Missouri State University.

The purpose of the CN/GLT Operating Plan is to describe any significant changes in patterns or types of service anticipated as a result of the proposed CN/GLT Transaction. Because the GLT Railroads are relatively small carriers that have developed largely to serve the specialized needs of the steel industry around the Great Lakes, and because the traffic flows on the GLT Railroads are consequently limited and simple, there are few operational changes that CN intends to make in implementing the Transaction. Most notable is that, because it would

own two parallel lines between Shelton Junction, MN, and Nopeming Junction, MN, CN would be able to operate those lines largely as a paired double track railroad, permitting it maximum operational flexibility over the broader Winnipeg-Chicago corridor . Accordingly, as described in the Operating Plan, CN could institute “directional running” on those lines, so that, for example, loaded southbound trains would move over the DMIR line, while northbound trains, consisting mostly of empty cars, would move over the CN line. CN does not project any traffic gains as a result of the Transaction, so the Operating Team only had to plan for traffic already transported by CN and the GLT Railroads and did not have to accommodate any traffic diverted to the CN system.

This Operating Plan was developed by a team of knowledgeable CN employees, working with GLT employees. CN operating, mechanical, and engineering personnel made site visits to the DMIR, B&LE, and P&C Dock properties to observe their facilities and operations. To the extent that Operating Plan team members were not already familiar with the locations likely to be affected by the Transaction, they visited those locations or consulted with knowledgeable GLT personnel for information about them. We have identified no potential capacity constraints on handling the projected traffic, and no need to develop expansion plans. Our labor experts worked with the Operating Plan team to develop the best approach to implementing the Operating Plan efficiently, while members of the Operating Plan team and others in CN provided information which is reflected in the Labor Impact Exhibit (Attachment A to the Operating Plan) regarding effects of the CN/GLT Transaction on CN and GLT Railroad employees. The Operating Plan describes the present and future operations of both CN and the GLT Railroads, including their principal routes, yards and terminals, train operations and schedules, line density, and absence of passenger/commuter operations, and explains the

relatively minor changes that CN would be able to make to operations on the two systems as a result of the Transaction. Those changes, while modest, should facilitate faster, more reliable rail service for CN's traffic moving between Winnipeg and Chicago, not only for significant amounts of cross-border traffic that has been fostered over the past decade by NAFTA, but also for traffic now carried by DMIR over its north-south line.

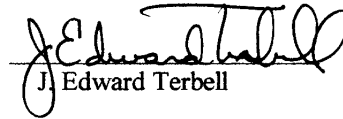
Based on my experience, it is my judgment that the service and other benefits expected from the CN/GLT Transaction could not be realized as readily by measures short of acquisition of the GLT Railroads by CN. Only acquisition of the GLT Railroads would give CN full ownership of the rail lines used for its operations between western Canada and Chicago. While CN and DMIR could enter into trackage rights agreements that would permit them to use the parallel lines between Shelton Junction and Nopeming Junction as paired track, that arrangement would leave ownership of the lines separate and would not permit maximum flexibility in their use. Only common control would put the two lines in the hands of a single entity that could assure coordinated operations over those lines in a way that would maximize overall efficiency, in the interests of shippers using both lines.

In conclusion, the CN/GLT Transaction would require few operational changes on the two systems, and those anticipated would result in improved service, provided more efficiently, to CN and GLT customers. The principal value of the Transaction to shippers would be in ensuring the future management of the GLT Railroads by an experienced, successful transportation enterprise, and thus contributing to their longevity and financial stability for the benefit of their customers.

VERIFICATION

I, J. Edward Terbell, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 1, 2003


J. Edward Terbell

OPERATING PLAN
(Exhibit 15)

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OPERATING PLAN

1.0 INTRODUCTION

Under 49 C.F.R. § 1180.8(b), Applicants must discuss any significant changes in patterns or types of service expected to result from the proposed Transaction. As described herein, Applicants anticipate only limited changes in operations once CN's control of the GLT Railroads is consummated. This Operating Plan describes those changes, how CN and GLT activities, personnel, and facilities would be integrated, and the effects of the Transaction on service, equipment utilization, facilities, traffic density, and labor.

Under the Stock Purchase Agreement (set forth as Exhibit 2 to the Application), GLT's rail carrier subsidiaries (DMIR, B&LE, and P&C Dock) would, upon STB authorization, become indirect wholly-owned subsidiaries of CN.¹ DMIR, which operates in Minnesota and Wisconsin, would be operated as a part of CN's Wisconsin Division and B&LE and P&C Dock, which operate in Ohio and Pennsylvania, would be operated as a part of CN's Michigan Division (both of which are units within CN's United States Region).

CN does not expect to make any physical changes to the GLT rail lines. Nearly all of the freight carried on DMIR today is taconite (iron ore processed into pellets) carried from pellet plants in the Mesabi Iron Range to docks at Duluth and Two Harbors, MN (each located on Lake Superior), limestone and supplies carried to the taconite plants, and transportation of taconite from those plants to the Duluth/Superior area for interchange with other railroads for further transportation by rail. Because of the concentration of DMIR traffic and the relative

¹ Under the Stock Purchase Agreement, CN would also acquire GLF Holdings Corp., which in turn owns 100% of the stock of Great Lakes Fleet, Inc. ("GLF"). The acquisition of control of GLF, which is not a rail carrier, is outside the Board's regulatory jurisdiction, and is therefore not a subject of this Application.

simplicity of the traffic flows, the Transaction would not require changes in existing operating patterns. Moreover, as described below, this traffic should move more efficiently as a result of the greater operational flexibility that the Transaction will provide to CN. B&LE and P&C Dock, which primarily handle iron ore, coal, and limestone, are not physically connected to CN's rail system. CN plans no changes to their operations.

The Operating Plan contemplates that implementation of the CN/GLT Transaction would be simple and straightforward:

- No traffic increases anticipated as a result of the Transaction
 - Capacity available in lines, yards, and terminals
 - No need for new facilities
- Few changes in traffic patterns and operations
 - No basic changes in routing and no new trains
 - Ownership of parallel lines between Shelton Junction and Nopeming Junction, MN, would permit coordinated operations that would maximize operational flexibility, including directional running, which would cut transit times and reduce need for meets of trains running in opposite directions on the same line.²
 - No effect on passenger or commuter service
- No line constructions or abandonments; no construction of connections or other capital expenditures (other than costs of integrating information technology) to implement the Transaction.
- Some changes, but basic continuity, in operating organization
 - Essential continuity of major functions - dispatching, crew calling, operating systems

² A "meet" occurs when two trains approach each other from opposite directions on the same track, requiring that one be held in a siding until the other can pass.

- No planned changes in local trains and yard service
 - No planned yard consolidations
- Some greater efficiencies in equipment utilization
- Maintenance of high safety standards.

These changes are relatively small, given that GLT is a small, largely specialized enterprise serving primarily the steel industry, and that the principal motivations for the Transaction are the desire of GLT's current owners to end their investment in the railroad business, and CN's desire to acquire DMIR lines that would fit well with CN's existing network and give CN full control of its important route between western Canada and Chicago, while affording CN the opportunity to expand its service to the North American steel industry.³

The CN/GLT Transaction which has arisen from these complementary motivations will be beneficial to GLT's customers. In the present economic climate, after a wave of bankruptcies among the major steel producers in the United States, those customers would be best served if the GLT Railroads become part of a larger and stable enterprise focused on rail transportation, with the proven ability to meet customers' service needs as efficiently as possible and with the financial resources in place to make longer-term investments in plant, equipment, and systems as they become needed. CN would bring its strong dedication to safety, high quality service, customer focus, and operational efficiency to all operations on the GLT Railroads.

³ CN's reasons for entering into the GLT Transaction are discussed more fully in the Verified Statement of Gerald P. Radloff.

Though the changes that CN plans are few and minor (especially when compared with other U.S. railroad mergers or even with CN's recent acquisitions of the IC and WC systems), the implementation of the CN/GLT Transaction would (like those CN transactions) be made in a measured, careful, step-by-step process, ensuring that the changes that are made do not compromise safety or service.

2.0 DEVELOPMENT OF THE OPERATING PLAN

This Operating Plan was developed by a team of knowledgeable CN employees, working with knowledgeable GLT employees. In addition, CN operating, mechanical, and engineering personnel have made on-site visits to the DMIR, B&LE, and P&C Dock properties in order to become more familiar with current GLT facilities and operations. The Operating Plan team focused on scheduling, network capability and capacity, physical operations, and existing plant. They used CN standards for train operations, maintenance and equipment utilization in developing the Plan.

3.0 PATTERNS OF SERVICE

3.1 CN Existing Operations in Minnesota and Wisconsin

The CN/GLT Transaction would have no effect on operations on CN's existing lines, except in part of the area of northeastern Minnesota and northern Wisconsin served by CN. CN's main line between the Canadian border and South Itasca (near Superior), WI, is operated by DWP, a CN subsidiary, and is an integral part of CN's Winnipeg-to-Chicago corridor. CN trains operate over the DWP line from the international border at Ranier, MN to Nopeming

Junction, MN, a distance of 155 miles.⁴ CN does not own a rail line between Nopeming Junction and South Itasca, but uses trackage rights over 17 miles of DMIR track between those points. At South Itasca, CN track ownership resumes, and CN owns its own lines between that point and Chicago. CN has operating offices, mechanical facilities, and dispatchers at Pokegama Yard, which is located near Superior, WI, along the DMIR line over which CN has trackage rights.

On average, CN has five scheduled northbound and five scheduled southbound trains moving over this single-track line each day. The southbound cars are almost all loaded, while most of the northbound cars are empty. In addition, a CN local train is scheduled out of Virginia, MN, five days a week. Extra trains operate over the line, and the total average daily number using the line is approximately 13.

3.2 DMIR Existing Operations

DMIR owns and operates 212 miles of rail line in northeastern Minnesota and northern Wisconsin. DMIR's Missabe Main Line runs 74 miles in a generally north-south direction, between Mountain Iron and Duluth, MN. Its Iron Range Main Line runs 74 miles in a generally east-west direction, between Iron Junction (where the Missabe Main Line and the Iron Range Main Line intersect) and Two Harbors. DMIR also operates 64 miles of branch lines. Among these branch lines are the Shaw Cut Off/Superior Branch, which runs 18 miles eastward from Emmert to Keenan, MN, where it meets the Missabe Main Line; the Taconite District,

⁴ Between Shelton Junction (near Virginia), MN, and Nopeming Junction, the DWP line runs parallel to DMIR's lines. The lines cross (but do not connect) at a grade-separated crossing 8 miles north of Nopeming Junction.

which is not contiguous with any other DMIR lines, but runs 4.5 miles to the west of Calumet, MN; and the Interstate Branch/Spirit Lake Branch, which runs from Adolph, MN, on the Missabe Main Line, 23 miles in a generally southward and eastward direction through Nopeming Junction to South Itasca, where DMIR's property ends. DMIR's line between Virginia, MN, in the north and Duluth and South Itasca in the south are generally parallel to CN's line between Virginia and South Itasca. For the southernmost 17 miles of the Virginia-South Itasca corridor, CN and DMIR operate over the same track, which is owned by DMIR and over which DMIR has granted CN trackage rights. DMIR also has trackage rights over 10 miles of CN track between Shelton and Minorca Junction, permitting DMIR to serve Ispat Inland Steel's iron ore mine and taconite pellet plant at Minorca, and over 19 miles of BNSF track between Emmert and Calumet, MN, leading to DMIR's Taconite District.

With the recent termination of operations at the taconite processing plant at Fairlane, MN, owned by Eveleth Mines, LLC, doing business as EVTAC Mining ("EVTAC"), DMIR's operations are focused primarily on the transportation of taconite from United States Steel's Minntac facility at Mountain Iron and Ispat Inland Steel's Minorca facility near Virginia to DMIR's dock at Two Harbors. At Two Harbors, the taconite is loaded into vessels owned by GLF and other water carriers for shipment to customers on or near the Great Lakes. The next highest volume of traffic is limestone from the dock at Duluth to the Minntac and Minorca facilities. Finally, DMIR handles a small amount of local freight to the mines and other industries located on its lines.

3.3 B&LE and P&C Dock Operations

B&LE's primary operations are the transportation of bulk materials, such as iron ore and limestone between Lake Erie and the steel mills near Pittsburgh, and coal to Lake Erie for further transportation by water to electric power plants. (B&LE's other principal commodities are steel products and scrap.) P&C Dock, located at Conneaut, OH, transloads bulk materials to and from vessels operating on the Great Lakes. CN has no plans to change the operations or function of either B&LE or P&C Dock.

3.4 Proposed Operations

CN plans to continue operating trains hauling taconite from Minntac and Minorca largely as they are operated by DMIR today. DMIR makes round trips between each of these facilities and Two Harbors in under 12 hours, and CN expects to continue to do so. These trains use DMIR's Iron Range Main Line, which runs in a generally east-west direction and is therefore perpendicular to both CN's DWP line and DMIR's Missabe Main Line, which run southward from the Virginia area to the Duluth/Superior area. The Transaction is not expected to affect significantly either the Iron Range Main Line or the trains that use that line.

Since May 2003, traffic over DMIR's Missabe Main Line, running north-south between Iron Junction and Duluth, has declined significantly because of the termination of activity at the EVTAC pellet processing facility. As a result, the only remaining traffic on the line is carloads of limestone carried inbound to Minntac and Minorca mines, local freight trains, and seasonal movements of taconite pellets for interchange with other carriers in the Duluth/Superior area for further transportation by rail when the locks at Sault Ste. Marie are closed for the winter and navigation via Lake Superior is precluded.

The only change CN plans in the operation of trains on the Missabe Main Line and the parallel DWP line is to coordinate operations of those two lines to maximize efficiency. Ownership of both lines between Shelton Junction and Nopeming Junction would permit CN to operate the two lines much like a double-track line. CN could thus institute "directional running" so that, for example, southbound trains would use the DMIR line, while northbound trains from the Duluth/Superior area, including U.S. export freight to Canada and returning empty cars, would use the DWP line.⁵ As the DMIR line segment is 63.7 miles in length, as compared to 60.0 miles on the DWP line, there would be only a minor change in the lengths of the paired movements.⁶

CN foresees several benefits if it adopts this method of operation. First, directional running would enable CN to move its trains from the Canadian border to the Duluth/Superior area in a more consistent and reliable manner, because it would reduce the number of train meets, which are the major source of delays on single-track railroads. (On average, CN estimates that approximately one and a half meets could be eliminated for each train re-routed between the parallel lines in this way, which would cut transit time for each re-routed train by between one and two hours.) Second, by using the DMIR line between Shelton

⁵To implement directional running, CN's DWP subsidiary would grant trackage rights to DMIR for DMIR's crews to run over DWP's lines between Shelton Junction and Nopeming Junction, while DMIR would grant trackage rights to DWP for DWP crews to run over DMIR's lines between the same points. (Simultaneously with the Application, CN is filing notices of exemption in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2) relating to these grants of trackage rights.)

⁶ At present, BNSF operates fewer than one train per day, on average, over the DMIR line between Shelton Junction and Keenan, and DMIR operates between 1 and 14 trains per day, on average, over different portions of its line between Shelton Junction and Nopeming Junction. These trains would continue to use the DMIR line, except for a small number of northbound DMIR trains carrying primarily empty cars, which would be rerouted to the DWP line.

Junction and Nopeming Junction for its loaded southbound trains, CN would be able to avoid capital expenditures for centralized traffic control (“CTC”) and for extensions of sidings extensions that CN was otherwise planning to incur on the parallel DWP line. Third, the DMIR line has newer ties and newer, heavier rail than the DWP line, so that running CN’s heavier, loaded southbound trains over the DMIR line would reduce CN’s overall maintenance expenditures. And finally, using the CN line primarily for CN’s lighter northbound trains (which primarily contain empty cars) would extend the life of the rail and ties on that segment of line. Once CN gains experience with coordinated operations over the parallel lines, opportunities to adjust operations to derive further efficiencies and improve our service reliability will likely present themselves.

3.5 Local Train Service

The purpose of local trains is to both gather traffic from and distribute it to customers at various outlying locations. On DMIR, these trains carry freight other than DMIR’s core traffic of iron ore (including taconite pellets) and limestone. Local trains on DMIR are not scheduled, but are run at the times and over the lines most appropriate for the movements as they become necessary. CN plans to continue this method of service for local trains on DMIR’s current lines.

3.6 Abandonments

CN does not plan to abandon any rail lines in connection with the CN/GLT Transaction.

4.0 IMPACTS ON TRAFFIC DENSITIES

Because CN does not anticipate any traffic diversions as a result of the CN/GLT Transaction, it projects no change in the total tonnage carried on the combined CN/GLT Railroad system, though with the coordinated use of the parallel CN and DMIR lines between Shelton Junction and Nopeming Junction, the distribution of tonnage carried over these lines may vary. The CN line today handles an average of 13 trains per day (6 southbound loaded trains, 6 northbound empty trains, and 1 local). The parallel DMIR line handles between 1 and 14 trains per day, depending on the particular segment.⁷ Re-routing to accommodate coordinated operations on the parallel lines could bring about a net increase of about 6.5 trains per day on the DMIR line, and a net decrease of about 6.5 trains per day on the CN line. The changes in gross tonnage and train counts that CN would expect on the affected DMIR and CN lines as a result of such re-routings are set forth in the tables found in Attachment A. (In Attachment A, “Pre-Merger” tonnage and train counts are based on actual traffic in 2002, adjusted to exclude traffic to and from the EVTAC pellet plant at Fairlane and Thunderbird Mine at Virginia, both of which have been closed since May 2003. CN’s existing line is identified in Attachment A as “DWP Line,” to indicate that it is owned and operated by CN’s DWP subsidiary.)

⁷ Until the closing of the EVTAC taconite pellet processing plant in May 2003, the DMIR line handled considerably more traffic, but that closing removed most of the traffic that formerly moved over the line. Most of DMIR’s taconite traffic now moves over DMIR’s Iron Range Division, which runs on an east-west line to the ore dock at Two Harbors, MN.

5.0 LINE INFRASTRUCTURE, NEW CONSTRUCTION, AND OTHER CAPITAL INVESTMENTS

CN has not identified any need for infrastructure investments on the lines it is acquiring from GLT, nor does it plan to build any new connections as a result of the Transaction.

6.0 IMPACT ON COMMUTER AND PASSENGER OPERATIONS

The Transaction would not affect intercity or commuter passenger service in any way.

7.0 EQUIPMENT UTILIZATION

DMIR's car fleet consists primarily of 70-ton ore jennies that are used to carry ore and limestone between the DMIR-served mines and docks and that, because of their advanced age, will eventually be replaced by newer cars. As DMIR's car fleet is integrated with CN's existing fleet, CN would be able to draw on a much larger, and on average newer, pool of equipment than is now available to serve shippers on DMIR lines. Especially as DMIR's older cars are retired, the combined CN/GLT Railroad system would be able to operate at a service level equal to or higher than that now provided, but with a more efficient and flexible car fleet.

CN would also be able to draw on a larger locomotive fleet than is now available for service on DMIR, providing greater flexibility and making possible more efficient service to DMIR customers. As the older DMIR locomotives are retired through attrition, the locomotive fleet in use on DMIR would become smaller and more efficient.

CN has no current plans to alter B&LE's car or locomotive fleets.

8.0 ORGANIZATIONAL STRUCTURE AND CENTRALIZED FUNCTIONS

8.1 Divisional Structure

DMIR would become part of CN's Wisconsin Division, and B&LE and P&C Dock would become part of CN's Michigan Division. (Both divisions are units of CN's United States Region.) CN's divisional and regional structure relies upon dispersed autonomy within the context of a fully integrated system. The resulting continuity and responsibility for operations should permit the combined CN/GLT Railroad system to maintain the high standards of safety and shipper service already established on the separate systems.

8.2 Crew Management and Train Dispatching

CN expects to integrate DMIR's crew management and train dispatching systems into CN's systems within the first two years after consummation of the CN/GLT Transaction. CN will consider extending its crew management and train dispatching systems to B&LE or P&C Dock, as appropriate.

9.0 EQUIPMENT MAINTENANCE AND MAINTENANCE-OF-WAY FACILITIES

CN has extensive locomotive and car maintenance, repair, and servicing facilities. In the U.S., heavy locomotive repair work is done primarily at Woodcrest Shops near Homewood, IL, while heavy car repair work is done primarily at Centralia, IL and Fond du Lac, WI.

B&LE has car and locomotive shops at Greenville, PA, which it uses for routine maintenance on its equipment. CN has no plans for changes in the operation of those facilities. DMIR has car and locomotive shops at Proctor, MN. Based on current traffic levels and U.S. shop capacity, CN does not foresee the need to continue operating the Proctor facility. CN

would continue to use DMIR's current facilities at Two Harbors and Keenan, MN, for locomotive servicing and light car and locomotive repairs. Heavy repair work for equipment serving the DMIR lines would be performed at one of CN's other U.S. maintenance facilities, the nearest of which are located at Woodcrest (near Homewood) and Centralia, IL.

CN plans no changes in patterns of day-to-day maintenance-of-way operations on the GLT Railroads' lines as a result of the Transaction.

10.0 TRANSPORTATION SYSTEMS

CN currently uses Service Reliability Strategy ("SRS") as its operating system to support network planning and operations, including the development of trip plans, performance reporting, and day-to-day management of traffic (including assembly and routing of car blocks and trains) throughout the system. SRS also supports the establishment, implementation, and monitoring of service commitments with customers, as well as car and container tracking, and the capture of waybill data.

DMIR, B&LE, and P&C Dock have no similar operating system, as they carry a relatively small amount of traffic, most of which moves in unit trains and does not require complex, specialized computer applications for planning and tracking. CN plans to extend SRS to the GLT Railroads at an appropriate time.

11.0 LABOR IMPACT

CN estimates that the GLT Transaction would result in the abolishment of 122 positions and the transfer of 18 positions. It anticipates that some of those impacts of the Transaction could be accommodated through normal attrition through the implementation

period, and affected employees could in some cases have the opportunity to fill other positions that might open up elsewhere in CN's U.S. operations.

The Transaction would generate efficiency gains that would likely affect employment levels in three primary areas.

First, as shown in the Labor Impact Exhibit set forth as Attachment B, the largest anticipated impact is in the area of general and administrative ("G & A") positions. CN intends to streamline duplicative administrative activities, including those performed by third parties. This would primarily affect executive and senior management personnel in Monroeville, PA and Duluth, as well as clerical ranks providing administrative services for the GLT Carriers. After the Transaction, B&LE would no longer perform administrative work that it currently performs on behalf of GLF. CN has no current plans for workforce reductions on P&C Dock. CN intends to use employees now working across the CN system to perform rail accounting and finance functions now performed by GLT.

Second, the CN/GLT Transaction would permit significant improvements in equipment utilization and maintenance activities. As newer cars and locomotives are integrated into the fleet of the combined system, maintenance requirements should drop. Further, as discussed earlier, under CN's current plan, heavy locomotive repair work would be relocated to the CN Woodcrest shop at Homewood, IL, where there is sufficient capacity to handle the additional work. Some employees would be offered the opportunity to follow this work (*see* Attachment B). CN plans to continue carrying out lighter locomotive and car repair work at existing DMIR shops at Keenan Yard and Two Harbors.

Finally, in the transportation area, dispatching and crew calling offices may be combined with those in other CN locations, resulting in some job reductions. Some employees

would have the opportunity to relocate to follow this work. The dispatching and crew calling offices would only be combined once systems have been put in place to ensure proper coordination of train movements across CN and the GLT Railroads.

CN does not foresee that the exchange of trackage rights between DWP and DMIR, which CN proposes in order to enhance the flexibility of its operations on the parallel lines between Shelton Junction and Nopeming Junction, would result in any adverse effect on train and engine service employees.

In all cases, CN would first attempt to make any necessary reductions through attrition. Where work opportunities require relocation of employees represented by labor organizations, CN would seek implementing agreements with those organizations that would allow the efficient use of the services of experienced employees at locations where job opportunities exist. CN has a strong track record in previous control transactions of voluntarily reaching implementing agreements with labor organizations, and sees no reason to expect any different outcome with the CN/GLT Transaction. Moreover, if any further Transaction-related reductions are required, eligible employees would be covered by employee protective conditions established in either *New York Dock Ry. – Control – Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979), or, in the case of trackage rights, *Norfolk & Western Ry. – Trackage Rights – Burlington Northern Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry. – Lease & Operation – California Western R.R.*, 360 I.C.C. 653 (1980).

Management employees whose positions are eliminated as a result of the Transaction, and who are not offered a job opportunity elsewhere in the CN system, would be

offered severance packages. If relocation to another job is offered, CN would offer to relocate the management person in accordance with the then current CN management relocation plan.

The projected changes represent CN's best estimate, based on information presently available, of the changes necessary to effect the public transportation benefits and the efficiencies of the Transaction. However, additional changes may be required in carrying out the approved transaction, as circumstances change, opportunities open elsewhere on the CN system, traffic and shipping patterns evolve, and CN acquires experience in operating the combined system.

12.0 SAFETY INTEGRATION PLAN

Pursuant to 49 C.F.R. §§ 244.17(a) and 1106.4(a), CN will submit a Safety Integration Plan ("SIP") to the Board and the Federal Railroad Administration ("FRA") within 40 days after the filing of the Application. As required by Board and FRA rules, this document will address corporate culture, employee training, operating practices, motive power and equipment, track safety standards and bridge structures, hazardous materials, dispatching operations, highway-rail grade crossing systems, personnel staffing, capital investment, and information systems on the CN and GLT systems, and will explain how the CN/GLT Transaction would have no adverse effects on safety related to any of those subjects.

ATTACHMENT A

**POTENTIAL CHANGES IN
TONNAGE AND TRAIN COUNTS
ON AFFECTED RAIL LINE SEGMENTS**

Attachment A
Potential Changes in Tonnage and Train Counts
on Affected Rail Line Segments

DMIR Line

GROSS TONNAGE PER YEAR (millions)

EVTAC Traffic Excluded from Base	PRE-MERGER				POST-MERGER										Overall		
	DMIR				Plus CN trains		Less DMIR Trains				DMIR TOTAL					% Increase/(Decrease)	
	NB	SB			NB	SB	NB	SB	NB	SB	NB	SB	NB	SB			
Segment																	
Shelton Junction-Wolf (2.9 mi.)	1.8	5.0			0.0	22.1	0.0	0.0	1.8	27.1	0.0	0.0	22.1	0.0	438%	323%	
Wolf-Iron Jct. (2.2 mi.)	10.9	31.7			0.0	22.1	0.0	0.0	10.9	53.8	0.0	0.0	22.1	0.0	70%	52%	
Iron Jct.-Fairlane (4.4 mi.)	5.0	9.5			0.0	22.1	-1.2	0.0	3.8	31.6	-1.2	-1.2	22.1	-25%	232%	143%	
Fairlane-Adolph (48.2 mi.)	5.0	9.5			0.0	22.1	-1.2	0.0	3.8	31.6	-1.2	-1.2	22.1	-25%	232%	143%	
Adolph-Nopeming Jct. (6.0 mi.)	1.1	4.0			0.0	22.1	-1.1	0.0	0.0	26.1	-1.1	0.0	22.1	-98%	548%	407%	

EVTAC Traffic Included in Base	PRE-MERGER				POST-MERGER												
					Plus CN trains		Less DMIR Trains		DMIR TOTAL				Increase/(Decrease)		% Increase/(Decrease)		Overall
	NB		SB		NB	SB	NB	SB	NB	SB	NB	SB	NB	SB			
Segment																	
Shelton Junction-Wolf (2.9 mi.)	7.6			26.3	0.0	22.1	0.0	0.0	0.0	7.6	48.4	0.0	22.1	0.0	84%	65%	
Wolf-Iron Jct. (2.2 mi.)	16.7			53.0	0.0	22.1	0.0	0.0	0.0	16.7	75.1	0.0	22.1	0.0	42%	32%	
Iron Jct.-Fairlane (4.4 mi.)	10.8			30.8	0.0	22.1	-1.2	0.0	0.0	9.5	52.9	-1.2	22.1	-12%	72%	50%	
Fairlane-Adolph (48.2 mi.)	6.3			15.1	0.0	22.1	-1.2	0.0	0.0	5.1	37.2	-1.2	22.1	-20%	146%	97%	
Adolph-Nopeming Jct. (6.0 mi.)	1.5			5.4	0.0	22.1	-1.2	0.0	0.0	0.2	27.5	-1.2	22.1	-86%	411%	305%	

TRAIN COUNT PER DAY

EVTA/C Traffic Excluded from Base	PRE-MERGER				POST-MERGER															
	DMIR				Plus CN trains				Less DMIR Trains				DMIR TOTAL				Increase/(Decrease)			
	NB		SB		NB		SB		NB		SB		NB		SB		NB		SB	
Segment																				
Shelton Junction-Wolf (2.9 mi.)	1.3			1.3					0.0	6.5			0.0	0.0		1.3	7.8		0.0	6.5
Wolf-Iron Jct. (2.2 mi.)	7.0			7.0					0.0	6.5			0.0	0.0		7.0	13.5		0.0	6.5
Iron Jct.-Fairlane (4.4 mi.)	2.6			2.6					0.0	6.5			0.0	0.0		2.6	9.1		0.0	6.5
Fairlane-Adolph (48.2 mi.)	2.6			2.6					0.0	6.5			0.0	0.0		2.6	9.1		0.0	6.5
Adolph-Nopeming Jct. (6.0 mi.)	0.5			0.5					0.0	6.5			0.0	0.0		0.5	7.0		0.0	6.5

EVTA C Traffic Included in Base	PRE-MERGER				POST-MERGER							
	DMIR				Plus CN trains		Less DMIR Trains		DMIR TOTAL			
	NB		SB		NB	SB	NB- DMIR	SB- DMIR	NB		SB	
Segment												
Shelton Junction-Wolf (2.9 mi.)	7.3	7.3			0.0	6.5	0.0	0.0	7.3	13.8	0.0	6.5
Wolf-Iron Jct. (2.2 mi.)	13.0	13.0			0.0	6.5	0.0	0.0	13.0	19.5	0.0	6.5
Iron Jct.-Fairlane (4.4 mi.)	8.6	8.6			0.0	6.5	-1.1	0.0	7.5	15.1	-1.1	6.5
Fairlane-Adolph (48.2 mi.)	3.8	3.8			0.0	6.5	-1.1	0.0	2.7	10.3	-1.1	6.5
Adolph-Nopeming Jct. (6.0 mi.)	0.8	0.8			0.0	6.5	-0.8	0.0	0.0	7.3	-0.8	6.5

DWP Line

EV/AC Traffic Included in Base	PRE-MERGER				POST-MERGER								Overall		
	DWP				Less CN Trains		Plus DMIR Trains		DWP TOTAL		Increase/(Decrease)			% Increase/(Decrease)	
	NB	SB			NB	SB	NB	SB	NB	SB	NB	SB		NB	SB
Segment					NB	SB	NB	SB	NB	SB	NB	SB	NB	SB	
Scale: Junction - Newcastle, Jct 160.0 mi. \	9.2	22.1			0.0	-22.1	1.2	0.0	10.4	0.0	1.2	-22.1	14%	-100%	-67%

EVTAC Traffic Included in Base	PRE-MERGER		POST-MERGER							
	DWP		Less CN Trains		Plus DMIR Trains		DWP TOTAL		Increase/(Decrease)	
	NB	SB	NB	SB	NB	SB	NB	SB		
Segment	6.5	6.5								
Shedden Junction - Noonevino Jct (60.0 mi.)			0.0	-6.5	0.8	0.0	7.3	0.0	0.8	-6.5

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**ATTACHMENT B
CN-GLT Labor Impact Exhibit**

DMIR

Location	Classification	Jobs Transferred	Jobs Abolished	Jobs Created	Transferred To	Year
Proctor, MN	Machinists	6	13		Homewood, IL	1
Proctor, MN	Electricians	2	16		Homewood, IL	1
Proctor, MN	Boilermakers	1			Homewood, IL	1
Proctor, MN	Sheet Metal Workers	1			Homewood, IL	1
Duluth, MN	Train Dispatchers	4	3		Stevens Point, WI, or Superior, WI	1
Duluth, MN	Clerks		17			2
Duluth, MN	Management	4	27		Homewood, IL	1
Totals		18	76			

B&LE

Location	Classification	Jobs Transferred	Jobs Abolished	Jobs Created	Transferred To	Year
Monroeville, PA	Clerks		17			2
Monroeville, PA	Management		24			1
Monroeville, PA	Management		5			2
Totals		0	46			

**GRAND
TOTAL**

18	122
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AGREEMENT
(Exhibit 2)
(Redacted)

EXECUTION COPY

STOCK PURCHASE AGREEMENT

Dated as of October 19, 2003

By and Between

GRAND TRUNK CORPORATION,
as the Purchaser

and

GREAT LAKES TRANSPORTATION LLC,
as the Seller

STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT, dated as of October 19, 2003 (as amended, modified or supplemented from time to time, this "**Agreement**"), by and between Grand Trunk Corporation, a Delaware corporation (the "**Purchaser**"), and Great Lakes Transportation LLC, a Delaware limited liability company (the "**Seller**").

WITNESSETH:

WHEREAS, the Seller owns (i) 1,000 shares of common stock, par value \$.01 per share, of DMIR Holdings Corp., a Delaware corporation ("**DMIR Holdings**"), being all of the issued and outstanding shares of such common stock (the "**DMIR Holdings Shares**"); (ii) 1,000 shares of common stock, par value \$.01 per share, of GLF Holdings Corp., a Delaware corporation ("**GLF Holdings**"), being all of the issued and outstanding shares of such common stock (the "**GLF Holdings Shares**"); (iii) 1,000 shares of common stock, par value \$.01 per share, of B&LE Holdings Corp., a Delaware corporation ("**B&LE Holdings**"), being all of the issued and outstanding shares of such common stock (the "**B&LE Holdings Shares**"); and (iv) 1,000 shares of common stock, par value \$.01 per share, of P&CD Holdings Corp., a Delaware corporation ("**P&CD Holdings**"), being all of the issued and outstanding shares of such common stock (the "**P&CD Holdings Shares**") and, together with the DMIR Holdings Shares, the GLF Holdings Shares and the B&LE Holdings Shares, collectively, the "**Shares**"). Each of DMIR Holdings, GLF Holdings, B&LE Holdings, and P&CD Holdings is sometimes referred to herein as a "**Company**" and are sometimes collectively referred to herein as the "**Companies**."

WHEREAS, (i) DMIR Holdings owns all of the issued and outstanding shares of capital stock of Duluth, Missabe and Iron Range Railway Company, a Delaware corporation ("**DMIR**"); (ii) GLF Holdings owns all of the issued and outstanding shares of capital stock of Great Lakes Fleet, Inc., a Delaware corporation ("**GLF**"); (iii) B&LE Holdings owns all of the issued and outstanding shares of capital stock of Bessemer and Lake Erie Railroad Company, a Delaware corporation ("**B&LE**"); and (iv) P&CD Holdings owns all of the issued and outstanding shares of capital stock of The Pittsburgh & Conneaut Dock Company, a Delaware corporation ("**P&CD**"). DMIR, GLF, B&LE and P&CD are sometimes collectively referred to herein as the "**Operating Subsidiaries**."

WHEREAS, the entire business and operations of the Seller, together with all rights, title and interest required to conduct such business and operations in the manner in which it is currently being conducted (the "**Business**"), is conducted and held through the Companies, the Operating Subsidiaries and their respective Subsidiaries.

WHEREAS, the Seller desires to sell, and the Purchaser desires to purchase, the Shares pursuant to this Agreement.

WHEREAS, it is the intention of the parties hereto that, upon consummation of the purchase and sale of the Shares pursuant to this Agreement, the Purchaser shall own all of the issued and outstanding shares of capital stock of each of the Companies.

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

DEFINITIONS

§1. Definitions.

§1.1 Defined Terms. When used in this Agreement, the following terms shall have the respective meanings specified therefor below:

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person; provided that, for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities (including common stock, partnership interests, membership interests or other ownership interests), by contract or otherwise.

"Antitrust Authorities" shall mean the Federal Trade Commission, the Antitrust Division of the United States Department of Justice, the Attorneys General of the several states of the United States and any other Governmental or Regulatory Authority having jurisdiction with respect to the transactions contemplated hereby pursuant to applicable Antitrust Laws.

"Antitrust Laws" shall mean the Sherman Antitrust Act of 1890, as amended, the Clayton Act of 1914, as amended, the HSR Act (as defined herein), the Federal Trade Commission Act of 1914, as amended, and all other federal, state and foreign statutes, Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

"Business Day" shall mean any day, other than a Saturday, Sunday or a day on which commercial banks located in New York, New York shall be authorized or required by law to close.

"Capital Expenditures" shall mean, for any Person in any period, the aggregate amount of capital expenditures made by such Person during such period, but excluding funds expended for such capital expenditures that are obtained from, or reimbursed by, any third party, including any United States federal, state or local Governmental or Regulatory Authority.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time and the regulations promulgated and the rulings issued thereunder. Section references to the Code are to the Code, as in effect at the date of this Agreement.

"Contract" shall mean any note, loan, bond, mortgage, indenture, license, written agreement, contract or lease, including all amendments thereto.

"Disclosure Letter" shall mean the disclosure letter delivered by the Seller to the Purchaser upon the execution of this Agreement.

"Dollars" or **"\$"** shall mean the lawful official currency of the United States.

"GAAP" shall mean United States generally accepted accounting principles, consistently applied, as in effect on the date hereof.

"Governmental or Regulatory Authority" shall mean any instrumentality, subdivision, court, executive department, administrative agency, commission, official or other authority of the United States, including the STB, MarAd, the United States Federal Trade Commission, the United States Department of Justice and the Attorneys General of the several states of the United States, or any other country or any state, province, prefect, municipality, locality or other government or political subdivision thereof, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority, including the American Bureau of Shipping or any other Vessel classification society.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"ICC Termination Act" shall mean the ICC Termination Act of 1995, as amended, and the rules and regulations promulgated thereunder.

"Indebtedness" of any Person shall mean and include indebtedness for borrowed money under the Senior Credit Agreement, the Note and Equity Interest Purchase Agreement, dated as of March 23, 2001, among the Seller, the Operating Subsidiaries and the other parties thereto, or otherwise and shall include, without duplication, the outstanding principal amount of, accrued and unpaid interest on, discounts and fees on, and any prepayment fees and penalties on (including any breakage costs in respect of interest rate hedging agreements or other derivative contracts) indebtedness for borrowed money of such Person and/or such Person's Subsidiaries. Indebtedness shall not, however, include accounts payable to trade creditors and accrued expenses arising in the ordinary course of business and shall not include the endorsement of negotiable instruments for collection in the ordinary course of business and shall not, in the case of any Company, include Indebtedness owing from any Company to any of its wholly owned Subsidiaries or from any of a Company's wholly owned Subsidiaries to such Company.

"Interest Rate Swap Confirmations" shall mean (x) the Interest Rate Swap Confirmation to DMIR with a trade date of August 1, 2001, from The Chase Manhattan Bank, Transaction Reference No. 0003304913 / 58764088, in the notional amount of \$24,000,000 and effective as of September 25, 2001 and (y) the Interest Rate Swap Confirmation to DMIR with a trade date of September 20, 2001 from The Chase Manhattan Bank, Transaction Reference No. 0004048075 / 59264006, in the notional amount of \$24,000,000 and effective as of September 25, 2001.

"Law" shall mean any statute, law (including common law), ordinance, rule, regulation of, or other requirement enacted, promulgated, issued or entered by, any Governmental or Regulatory Authority.

"Lien" shall mean any lien, pledge, security interest, easement, mortgage, charge, indenture, deed of trust, right of way, restriction on the use of real property, encroachment, encumbrance, license to third parties, right of first refusal, lease to third parties or security agreement.

"MarAd" shall mean the Maritime Administration of the United States Department of Transportation, and any successor board, agency or other Governmental or Regulatory Authority.

"Material Adverse Change" or **"Material Adverse Effect"** shall mean (A) when used with respect to the Business, any event, change or occurrence which, individually or together with any other event, change or occurrence, has or would reasonably be expected to have a material adverse effect on the properties, operations, business, assets, results of operations or financial condition of the Companies and their respective Subsidiaries taken as a whole, other than any such change or effect resulting from or arising out of (i) any general change in global economic conditions or the economic conditions of the United States of America or the financing or capital markets in general; (ii) any changes in the condition of the transportation industry or market; (iii) the enactment or repeal of any Law (or a change in any Law or the interpretation thereof); (iv) the announcement or pendency of this Agreement or the transactions contemplated hereby or the consummation of the transactions contemplated hereby; (v) the announcement by the Purchaser of its plans or intentions with respect to the conduct of the Business (including in respect of employees); (vi) any action taken by a party hereto in accordance with this Agreement; (vii) any action required to be taken under Law or any existing Contract by which any Company or any of its Subsidiaries (or any of their respective properties) is bound; (viii) any change in GAAP; (ix) any failure to meet projections for the Business; provided that any underlying facts or circumstances causing such failure may be considered in determining whether a Material Adverse Effect or Material Adverse Change has occurred; (x) any change arising in connection with acts of war, sabotage or terrorism, military actions or the escalation thereof; (xi) the loss of revenue caused by the bankruptcy or cessation of operations of Evtac Mining Co.; (xii) any matter of which the Purchaser has actual knowledge on the date hereof or (xiii) any change in pension liabilities to the extent such change results from a change in the actuarial assumptions with respect to such pension liabilities; provided that, notwithstanding anything to the contrary set forth herein, a Material Adverse Change or Material Adverse Effect shall be deemed to have occurred if (x) for any reason and regardless of the occurrence of any event, fact or circumstance stated in clause (i) through (xiii) above, revenue from the Business (excluding for this purpose all revenue from Evtac Mining Co.) in any six calendar month period ending more than one month after the date hereof (the **"Reference Period"**) and prior to the Closing Date is less than 83% of the amount of revenue from the Business (excluding for this purpose all revenue from Evtac Mining Co.) in the six calendar month period ending one year prior to the last day of the Reference Period (unless the facts and circumstances which are the underlying cause of such decrease in revenue would not reasonably be expected to continue in periods following the Closing Date) or (y) any event has occurred that would reasonably be expected to cause the revenue from the Business (excluding for this purpose all revenue from

Evtac Mining Co.) during the one year period beginning on the Closing Date to be less than 83% of the amount of revenue from the Business (excluding for this purpose all revenue from Evtac Mining Co.) in the one year period ending on the Closing Date (unless the facts and circumstances which are the underlying cause of such decrease in revenue would not reasonably be expected to continue following the end of such one year period) or (B) when used with respect to the Seller or the Purchaser, as the case may be, any materially adverse change in or effect on the ability of the Seller or the Purchaser, as the case may be, to perform its respective obligations hereunder. When the words "material," "material adverse effect," "material adverse change," and similar terms are used without being capitalized, such terms shall be construed and interpreted without any reference to this definition.

"Mezzanine Notes" shall mean those certain 13% Senior Subordinated Notes due 2009 issued by the Operating Companies pursuant to that certain Note and Equity Interest Purchase Agreement, dated as of March 23, 2001, by and among the Seller, the Operating Companies, Blackstone Mezzanine Partners L.P., Blackstone Mezzanine Holdings L.P., and J/Z CBO (Delaware) LLC.

"Net Capital Expenditures" shall mean the amount of Capital Expenditures made by the Seller, the Companies the Operating Subsidiaries or any of their respective Subsidiaries in respect of the Business, *less* an amount equal to the net proceeds of any Permitted Disposals effected by the Seller, the Companies, the Operating Subsidiaries or any of their respective Subsidiaries, in each case to the extent made or effected during the period commencing on January 1, 2003 and ending on, and including, the Closing Date.

"Order" shall mean any judgment, order, injunction, ruling, assessment, decree or writ of any Governmental or Regulatory Authority or any arbitrator.

"Pension Funding Adjustment" shall mean an amount equal to (i) the amount by which (x) all payments (excluding excise taxes and penalties paid to any Governmental or Regulatory Authority) made by the Seller, the Companies, the Operating Companies or any of their respective Subsidiaries during the period commencing on January 1, 2003 and ending on and including the Closing Date to fund Employee Benefit Plans subject to Section 412 of the Code (other than Multiemployer Plans) exceeds or is less than (y) the Pension Funding Adjustment Baseline, *minus* (ii) the amount of all tax benefits accrued by the Business to the extent included in Net Working Capital pursuant to Section 2.8 and all tax benefits actually realized by the Business during the period commencing on January 1, 2003 and ending on and including the Closing Date, in each case with respect to those payments (excluding excise taxes and penalties paid to any Governmental or Regulatory Authority) made by the Seller, the Companies, the Operating Companies or any of their respective Subsidiaries during such period to fund Employee Benefit Plans subject to Section 412 of the Code (other than Multiemployer Plans) in excess of the Pension Funding Adjustment Baseline.

"Pension Funding Adjustment Baseline" shall mean the amount of the projected payments set forth on Schedule 1.1A between January 1, 2003 and the Closing Date *plus* \$3,000,000.

"Permitted Disposal" shall mean any sale, lease, assignment, transfer or other disposal of any obsolete or surplus assets or surplus real estate.

"Permitted Liens" shall mean (i) except with respect to Liens set forth on Schedule 1.1B attached hereto (which Liens shall in all respects be released prior to or concurrent with the Closing), Liens reflected on the Balance Sheet, (ii) zoning or planning restrictions or regulations, public or recorded private easements, permits, restrictive covenants, encroachments and other restrictions or limitations on the use of real property or irregularities in, or exceptions to, title thereto, provided that such Liens do not render the subject property unusable for the conduct of the Business and are not violated or breached by the operations of the Business conducted thereon, (iii) Liens for current taxes, assessments or governmental charges or levies not yet due and payable or, to the extent set forth on Schedule 3.8 of the Disclosure Letter, which are being contested in good faith and only insofar as such contest does not involve forfeiture or sale of the property subject to the Lien, (iv) to the extent set forth on Schedule 1.1C attached hereto, Liens of landlords, carriers, warehousemen, mechanics, suppliers, material men or repairmen arising in the ordinary course of business, and (v) other Liens arising by operation of Law and which are not yet due and payable arising in connection with the operation of the Business in the ordinary course.

"Person" shall mean and include an individual, a partnership, a joint venture, a corporation, a limited liability company, a limited liability partnership, a trust, an unincorporated organization and a Governmental or Regulatory Authority.

"Reorganization Agreement" shall mean the Reorganization and Exchange Agreement dated as of October 4, 2000, among Transtar, Inc., Holdings and USX Corporation (n/k/a US Steel Corporation).

"Residual Capital Expenditure Budget" shall mean an amount equal to the product of (x) \$10,700,000 and (y) a fraction, the numerator of which shall be 366 *minus* the number of calendar days, if any, elapsed in the calendar year of 2004 on the Closing Date (including the Closing Date) and the denominator of which is 366.

"Securities Act" shall mean the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"Senior Credit Agreement" shall mean the Credit Agreement, dated as of March 23, 2001, among the Seller and certain of its indirect Subsidiaries (as borrowers), the lenders party thereto, The Chase Manhattan Bank (as agent and issuing bank), JPMorgan (as joint lead arranger and joint bookrunner), Credit Suisse First Boston (as joint lead arranger, joint bookrunner and syndication agent) and Industrial Bank of Japan, Limited (as documentation agent), as such agreement is in effect from time to time.

"Subsidiary" shall mean, with respect to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is owned by such Person directly or indirectly

through one or more Subsidiaries of such Person and (ii) any partnership, association, joint venture or other entity in which such Person directly or indirectly through one or more Subsidiaries of such Person has more than a 50% equity interest.

“Surface Transportation Board” or “STB” shall mean the Surface Transportation Board of the United States Department of Transportation, and any successor board, agency or other Governmental or Regulatory Authority.

“Target Net Capital Expenditures” shall be calculated as of the Closing Date and shall mean (a) the sum of (x) \$8,500,000 and (y) the product of \$10.7 million multiplied by a fraction, the numerator of which shall be the number of calendar days, if any, elapsed on the Closing Date in the calendar year of 2004 (including the Closing Date) and the denominator of which shall be 366, less (b) the lesser of (x) \$2,000,000 and (y) the actual amount of Permitted Disposals made during the period commencing on January 1, 2003 and ending on, and including, the Closing Date.

“Taxes” shall mean all taxes, assessments, charges, duties, fees, levies or other governmental charges, including all U.S. and non-U.S. federal, state, local and other income, franchise, profits, capital gains, capital stock, transfer, sales, use, occupation, property, excise, severance, windfall profits, stamp, license, payroll, withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a Return), all estimated taxes, deficiency assessments, additions to tax, penalties and interest.

“United States Citizen” shall mean a “citizen of the United States” as that term is defined in and interpreted under the Shipping Act of 1916, as amended, and the Merchant Marine Act, 1920, as amended, in each case qualified to own and operate vessels in the United States coastwise trade.

“Vessel” shall mean each, and **“Vessels”** shall mean all, of the United States flag vessels listed on Schedule 3.24(a) of the Disclosure Letter.

§1.2 **Additional Defined Terms.** In addition to the terms defined in Section 1.1, the following terms shall have the respective meanings assigned thereto in the sections indicated below:

Defined Term	Section	Defined Term	Section
Actual Net Capital Expenditures	§2.8(b)	Firm	§2.8(b)
Actual Net Working Capital	§2.8(b)	Fleet	§6.7(b)(ii)(x)
Actual Pension Funding Adjustment	§2.8(b)	GLF	Recitals
Actual Value	§2.8(b)(iii)	GLF Holdings	Recitals
Agreement	Preamble	GLF Holdings Shares	Recitals
Assumed Contracts	§2.2	Hazardous Material	§3.18(a)(iii)
Assumed Liabilities	§2.2	Head Charterer	§2.6(a)(ii)
B&LE	Recitals	High Value	§2.8(b)(ii)
B&LE Holdings	Recitals	Holdings	§2.6(a)
B&LE Holdings Shares	Recitals	Holdings Side Letter	§2.6(b)
Balance Sheet	§3.7(a)	Intellectual Property	§3.14(a)
Balance Sheet Date	§3.7(a)	Intercompany Debt	§2.6(c)
Business	Recitals	Internal Loans	§3.13(1)
Charter	§3.24(b)	Knowledge	§1.5
Closing	§2.4	Lease	§3.10
Closing Date	§2.4	Leased Property	§3.10
Closing Review	§2.8(b)	Low Value	§2.8(b)(i)
Companies	Recitals	Maritime Authorities	§5.4(c)
Company	Recitals	Material Contract	§3.11(a)
Company Covered Person	§5.7	Multiemployer Plan	§3.17
Company Property	§3.18(a)(i)	Net Working Capital	§2.8(b)
Confidentiality Agreement	§5.2(c)	Objection Notice	§2.8(b)
Demise Charterer	§6.7(a)(ii)(x)	Operating Subsidiaries	Recitals
Deposit	§2.3(b)	Owned Real Property	§3.9
DMIR	Recitals	Owned Vessels	§6.7(a)(i)
DMIR Holdings	Recitals	P&CD	Recitals
DMIR Holdings Shares	Recitals	P&CD Holdings	Recitals
Draft Closing Statement	§2.8(b)	P&CD Holdings Shares	Recitals
Employee Benefit Plans	§3.17	Permit	§3.19
Environmental Law(s)	§3.18(a)(ii)	Purchase Price	§2.3(a)
ERISA	§3.17	Purchaser	Preamble
Escrow Agent	§2.3(b)	Purchaser Side Letter	§2.6(a)
Escrow Agreement	§2.3(b)	Reference Period	§1.1
Estimated Net Capital Expenditures	§2.8(a)	Release	§3.18(a)(iv)
Estimated Net Working Capital	§2.8(a)	Seller	Preamble
Estimated Pension Funding Adjustment	§2.8(a)	Shares	Recitals
Estimated Purchase Price Adjustment	§2.8(a)	Software	§3.14(a)
Final Net Capital Expenditures	§2.8(c)	Speer	§6.7(b)(i)

Defined Term	Section	Defined Term	Section
Excess		Split-off	§3.13(j)
Final Net Capital Expenditures	§2.8(c)	Tax Opinion	§3.13(j)
Shortfall		Tax Returns	§3.13(c)
Final Net Working Capital	§2.8(c)	Transfer Taxes	§10.13
Excess		Transtar	§3.13(j)
Final Net Working Capital	§2.8(c)	Unaudited Balance Sheet	§3.7(a)
Shortfall		Unaudited Balance Sheet Date	§3.7(a)
Final Pension Funding	§2.8(c)	2004 Capital Expenditures	§5.2(e)
Adjustment Excess		Budget	
Final Pension Funding	§2.8(c)		
Adjustment Shortfall			
Final Purchase Price	§2.8(d)		
Adjustment			
US Steel	§2.6(a)(ii)		

§1.3 Construction. In this Agreement, unless the context otherwise requires:

(a) any reference in this Agreement to “writing” or comparable expressions includes a reference to facsimile transmission or comparable means of communication;

(b) words expressed in the singular number shall include the plural and vice versa, words expressed in the masculine shall include the feminine and neuter gender and vice versa;

(c) references to Articles, Sections, Exhibits, Schedules and Recitals are references to articles, sections, exhibits, schedules and recitals of this Agreement;

(d) reference to “day” or “days” are to calendar days unless otherwise indicated;

(e) this “Agreement” or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented;

(f) “include”, “includes” and “including” are deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of similar import;

(g) except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP; and

(h) “nonappealable” means both not subject to appeal and not the subject of a pending appeal.

§1.4 Schedules and Exhibits. The Schedules and Exhibits to this Agreement are incorporated into and form an integral part of this Agreement. If an Exhibit is a form of agreement, such agreement, when executed and delivered by the parties thereto, shall constitute a document independent of this Agreement. Disclosure in any section or subsection of the Disclosure Letter and in any Schedule or Exhibit to this Agreement, if sufficient to reasonably inform the Purchaser of information required to be disclosed in another Schedule or Section of this Agreement, shall constitute disclosure for purposes of such other Schedule or Section of this Agreement.

§1.5 Knowledge. Where any representation or warranty or other provision contained in this Agreement is expressly qualified by reference to the "**Knowledge**" of the Seller (or phrases of like import), such Knowledge shall mean the actual knowledge, after conducting such investigation and otherwise performing their jobs in the ordinary course consistent with past practice, of John E. Giles, David C. Broadbent, David L. Novak, Charles M. Patterson, Peter D. Stephenson, Elliott M. Hughes III, Jerry E. Vest, Paul A. Lundberg, Lekan M. Greenwald, Harold Tynes, James Streett, Merrill Anderson and Gregg Ruhl (or if the employment with the Business of any such person is terminated prior to Closing, their replacement).

ARTICLE II

PURCHASE AND SALE OF SHARES; ASSIGNMENT AND ASSUMPTION OF CERTAIN CONTRACTS

§2.1 Purchase and Sale of Shares. On the terms, and subject to the conditions, set forth in this Agreement, the Seller agrees to sell, assign, transfer and deliver to the Purchaser on the Closing Date, and the Purchaser agrees to purchase from the Seller on the Closing Date, the Shares, free and clear of all Liens (other than Liens created by the Purchaser). The certificates representing the Shares shall be duly endorsed in blank, or accompanied by powers duly executed in blank by the Seller, in each case with all necessary transfer tax and other revenue stamps, acquired at the Purchaser's expense, in accordance with Section 10.13, affixed and canceled.

§2.2 Assignment and Assumption of Certain Contracts. On the terms, and subject to the conditions, set forth in this Agreement, the Seller agrees to, and agrees to cause Holdings to, sell, assign, transfer and deliver to the Purchaser on the Closing Date, and the Purchaser agrees to purchase, assume and receive from the Seller and Holdings on the Closing Date, all of the Seller's and Holdings' right, title and interest at the Closing in Contracts to which the Seller and Holdings is party or by which the Seller and Holdings is otherwise bound, which Contracts are set forth on Schedule 2.2 of the Disclosure Letter (collectively, the "**Assumed Contracts**"). The Purchaser shall assume, and be solely and exclusively liable for, and shall pay, perform and discharge, in a timely manner and in accordance with the terms thereof, any and all obligations and liabilities of the Seller and Holdings of any kind relating to the Assumed Contracts which arise at any time after the Closing Date (including any and all such liabilities arising upon or on account of the Closing or any of the other transactions contemplated by this Agreement) (collectively, the "**Assumed Liabilities**"); and shall indemnify and hold harmless the Seller and Holdings in respect of any and all Assumed Liabilities.

§2.3 Payment of Purchase Price. (a) In full consideration for the purchase by the Purchaser of the Shares and the assumption by the Purchaser of the Assumed Contracts, the Purchaser shall, in accordance with the succeeding terms of this Section 2.3, (x) pay to the Seller \$380,000,000 in cash (the "Purchase Price") plus or minus the Final Purchase Price Adjustment and (y) assume the Assumed Liabilities.

(b) Simultaneously with the execution of this Agreement, the Purchaser shall deposit with White & Case LLP, as escrow agent, (the "Escrow Agent") an amount equal to \$12,000,000 in cash (the "Deposit") by wire transfer of immediately available funds to an account previously identified by the Escrow Agent, which account shall be an interest-bearing account with an institution the deposits in which are insured by an agency of the United States, provided that any and all accrued interest and other earnings thereon from time to time shall be deemed to constitute part of the Deposit. The Deposit shall be released (A) to the Seller on the Closing Date if the Closing takes place (in which case the Deposit shall be credited against the Purchase Price as contemplated by Section 2.3(c)) or (B) in accordance with Section 9.2. Until such time as the Deposit shall have been released as contemplated by the immediately preceding sentence, the Escrow Agent shall retain the Deposit in accordance with the terms of the Escrow Agreement attached hereto as Exhibit A (the "Escrow Agreement").

(c) On the Closing Date, the Purchaser shall (x) pay to the Seller in cash, by wire transfer of immediately available funds to the account or accounts identified by the Seller in writing at least two (2) Business Days prior to the Closing Date, an amount equal to the Purchase Price minus the Deposit plus or minus the Estimated Purchase Price Adjustment and (y) assume the Assumed Liabilities.

§2.4 Closing. The purchase and sale referred to in Section 2.1, the assignment and assumption referred to in Section 2.2 and the deliveries and transactions referred to in Section 2.6 (the "Closing") shall take place at 10:00 A.M. (New York time) at the offices of White & Case LLP, 1155 Avenue of the Americas, New York, New York as soon as practicable after the last of the conditions set forth in Articles VI and VII (other than those which by their nature will be satisfied at the Closing) is satisfied or waived, but in no event later than the tenth (10th) Business Day thereafter or at such other time and date (not later than the Outside Date) as the parties hereto shall agree. Such date is herein referred to as the "Closing Date."

§2.5 Non-Assignable Contracts; Further Assurances. (a) Notwithstanding anything to the contrary set forth in this Agreement, to the extent that the assignment of any Assumed Contract (excluding the contracts set forth on Schedule 2.5 of the Disclosure Letter) as provided hereunder shall require the consent of another party thereto, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof, but the Seller shall use its commercially reasonable efforts (and the Purchaser shall reasonably cooperate with the Seller) to obtain the written consent of the other parties to the assignment of all such Assumed Contracts, the Seller and the Purchaser shall cooperate in good faith in any arrangement reasonably acceptable to them designed to provide to the Purchaser the benefits thereof, subject to the assumption by the Purchaser of the obligations and liabilities of the Seller, under any such Assumed Contracts. The Purchaser acknowledges and agrees that neither the Seller nor any of its Affiliates shall have any liability whatsoever arising out of or relating to the failure to assign any Assumed Contract to the Purchaser as contemplated above,

and that no representation, warranty or covenant of the Seller contained herein shall be breached or deemed breached, and no condition to the Purchaser's obligations to close the transactions contemplated by this Agreement shall be deemed not satisfied, as a result of the failure to obtain any such assignments or as a result of any suit, proceeding, litigation or other action commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any such assignments.

(b) On and after the Closing Date, the Seller shall, at the Purchaser's request and expense, from time to time execute and deliver such further instruments of conveyance, assignment and transfer in respect of the Assumed Contracts and the Shares, and each party shall take, or cause to be taken, such other actions as either party may reasonably request for more effective conveyance, assignment and transfer of the Assumed Contracts and the Shares to the Purchaser. The Purchaser acknowledges and agrees that neither the Seller nor any of its Affiliates shall be required to expend money (unless reimbursed in full in cash by the Purchaser), commence any litigation or offer or grant any accommodation (financial or otherwise) to any third party in connection with its compliance with this Section 2.5.

§2.6 Closing Deliveries. Subject to the conditions set forth in this Agreement, the parties shall make the following deliveries and transactions on the Closing Date:

(a) The Seller shall deliver to Purchaser all of the following, in form and substance reasonably acceptable to the Purchaser:

(i) certificates of the Secretary of State of the applicable jurisdictions of organization providing that the Seller, the Companies and each of the Companies' Subsidiaries is in good standing;

(ii) copies of all third party (including landlords and parties to any Assumed Contract or Material Contract) and governmental consents, approvals, filings, releases and terminations required in connection with the consummation of the transactions contemplated herein and set forth on Schedule 6.5 of the Disclosure Letter and set forth in Section 6.7;

(iii) an opinion, dated the Closing Date, of counsel to the Seller, in the form attached as Exhibit B hereto;

(iv) a certificate of an executive officer of the Seller certifying that the conditions to Closing set forth in Sections 6.1 and 6.2 have been satisfied;

(v) a certificate of incumbency and certified copies of the written action of the Seller's managers or members authorizing the execution, delivery and performance of this Agreement and authorizing the acts of its managers or members in carrying out the terms and provisions hereof;

(vi) releases of all Liens on all assets of the Business other than Permitted Liens and the Liens set forth on Schedule 2.6(a) of the Disclosure Letter;

(vii)

(viii) an Assignment and Assumption Agreement in form and substance mutually acceptable to the Purchaser and the Seller, pertaining to the contracts listed on Schedule 2.2.

(ix) such other documents or instruments as Purchaser may reasonably request to effect the transactions contemplated hereby.

(b) The Purchaser shall deliver to the Seller all of the following, in form and substance reasonably acceptable to the Seller:

(i) a certificate of the Secretary of State of the State of Delaware providing that the Purchaser is in good standing;

(ii) a certificate of an executive officer of the Purchaser certifying that the conditions to Closing set forth in Sections 7.1 and 7.2 have been satisfied;

(iii) an opinion, dated the Closing Date, of outside counsel to the Purchaser in the form attached as Exhibit D hereto, and an opinion, dated the Closing Date, of outside counsel to the Purchaser that the execution, delivery and performance by the Purchaser of the Stock Purchase Agreement and the Purchaser Side Letter, and the consummation of the transactions contemplated thereby, do not violate or contravene (subject to obtaining the consents and approvals specified in Article VI of the Stock Purchase Agreement) any federal Antitrust Laws of the United States and the ICC Termination Act applicable to the Purchaser;

(iv) copies of all third party and governmental consents, approvals, filings, releases and terminations required in connection with the consummation of the transactions contemplated herein and set forth on Schedule 7.5 of the Disclosure Letter;

(v) a certificate of incumbency and certified copies of the written action of the Purchaser's Board of Directors authorizing the execution, delivery and performance of this Agreement and authorizing the acts of its officers in carrying out the terms and provisions hereof;

(vi) a letter (the "**Purchaser Side Letter**") from the Purchaser to Holdings and Blackstone Transportation Company, Inc. with respect to the matters set forth in Section 5.11, in the form attached as Exhibit E hereto;

(vii) such other documents or instruments as the Seller may reasonably request to effect the transactions contemplated hereby.

(viii) an Assignment and Assumption Agreement in form and substance mutually acceptable to the Purchaser and the Seller, pertaining to the contracts listed on Schedule 2.2.

(c) Simultaneously with the Closing, Seller shall distribute to Holdings an amount of cash equal to the Indebtedness owed to the Operating Subsidiaries by Holdings (the "**Intercompany Debt**"). Upon receipt of such cash, Holdings shall repay the Intercompany Debt. Upon such repayment, the Operating Subsidiaries shall (i) repay all Indebtedness of the Operating Subsidiaries, (ii) deliver to Purchaser all appropriate payoff letters and make arrangements reasonably satisfactory to Purchaser for such holders to deliver lien releases and canceled notes, as applicable, at the Closing, and (iii) distribute any cash from the payment of such Intercompany Debt to the Companies, which shall then distribute such cash to the Seller. All arrangements for such payments shall be subject to the prior approval of Purchaser (such approval not to be unreasonably withheld, conditioned or delayed).

§2.7 Allocation of Purchase Price. The Purchase Price will be allocated among the Shares and the Assumed Contracts as set forth on Schedule 2.7 of the Disclosure Letter in a manner to be determined by the Purchaser and reasonably acceptable to the Seller.

§2.8 Purchase Price Adjustment. (a) On or prior to the date which is two (2) Business Days prior to the Closing Date, the Seller shall deliver to the Purchaser (following consultation with the Purchaser) a good faith estimate of (i) the Business's Net Working Capital (as defined below) as of the Closing Date (such estimate being hereinafter referred to as the "**Estimated Net Working Capital**"), (ii) the Net Capital Expenditures as of the Closing Date (such estimate being hereinafter referred to as the "**Estimated Net Capital Expenditures**") and (iii) the Pension Funding Adjustment (such estimate being hereinafter referred to as the "**Estimated Pension Funding Adjustment**"). If the Estimated Net Working Capital is less than \$0, the amount paid at Closing pursuant to Section 2.3(c) will be reduced by an amount equal to such shortfall. If the Estimated Net Working Capital is greater than \$0, the amount paid at

Closing pursuant to Section 2.3(c) will be increased by an amount equal to such excess. If the Estimated Net Capital Expenditures is less than the Target Net Capital Expenditures, the amount paid at Closing pursuant to Section 2.3(c) will be decreased by an amount equal to such shortfall. If the Estimated Net Capital Expenditures is greater than the Target Net Capital Expenditures, the amount paid at Closing pursuant to Section 2.3(c) will be increased by an amount equal to the lesser of (x) such excess and (y) one million dollars (\$1,000,000). If the Estimated Pension Funding Adjustment is less than \$0, the amount paid at Closing pursuant to Section 2.3(c) will be reduced by an amount equal to such shortfall. If the Estimated Pension Funding Adjustment is greater than \$0, the amount paid at Closing pursuant to Section 2.3(c) will be increased by an amount equal to such excess. The cumulative reduction or increase in the Purchase Price effected by this Section 2.8(a) is referred to herein as the **"Estimated Purchase Price Adjustment."**

(b) Within forty-five (45) days after the Closing Date, the Purchaser will conduct a review (the **"Closing Review"**) of the Net Working Capital, the Net Capital Expenditures, and the Pension Funding Adjustment, as of the Closing Date (effective immediately following completion of the Closing) and will prepare and deliver to the Seller a computation of the amount of the Net Working Capital, the Net Capital Expenditures, and the Pension Funding Adjustment, as of such date (the **"Draft Closing Statement"**). For purposes of this Section 2.8, **"Net Working Capital"** shall mean all of the Business's current assets less all of its current liabilities as determined in accordance with GAAP and policies consistent with the Seller's prior practice; provided that, to the extent not duplicative, (x) current assets shall exclude any pension assets, (y) current liabilities shall exclude any pension liabilities (but shall include other post-employment benefits liabilities) and (z) current assets and current liabilities, as the case may be, shall include all current tax deductions and credits or current tax liabilities resulting from the consummation of the transactions contemplated hereby or otherwise consummated prior to the Closing Date including, in particular, any tax deductions resulting from, among other items, (i) the exercise or cancellation of the stock options (to acquire membership interests of the Seller) held immediately prior to the transaction by certain employees of the Companies, the Operating Subsidiaries and their respective Subsidiaries; (ii) the prepayment premium resulting from the prepayment of the Mezzanine Notes; (iii) the termination of the Interest Rate Swap Confirmations; (iv) interest expense with respect to the Mezzanine Notes and Senior Credit Agreement (including original issue discount on the Mezzanine Notes) and (v) financing expenses related to the Split-off that have been capitalized for financial statement purposes but have not been deducted in a prior period for U.S. federal income tax purposes (collectively, the **"Specified Transaction Expenses"**). In determining the effect of the Specified Transaction Expenses on the amount of current assets or current liabilities, (i) the Specified Transaction Expenses shall not exceed twenty-five million dollars (\$25,000,000); (ii) an amount equal to the Applicable Portion of the Specified Transaction Expenses shall be taken into account; (iii) it shall be assumed that (A) the Applicable Portion of the Specified Transaction Expenses is currently deductible in full by the Companies, Operating Companies or their respective Subsidiaries (except as otherwise provided in (iv)) and (B) the Companies, Operating Companies and their respective Subsidiaries are subject to tax at a rate equal to 38.8%; and (iv) no federal, state or local income Tax benefit of the deductions resulting from the Specified Transaction Expenses that are properly deductible by the Seller, or any direct or indirect owner of the Seller, shall be taken into account. The **"Applicable Portion"** of the Specified Transaction Expenses shall be equal to: (x) 100% of the Specified Transaction Expenses, to the extent that such

Specified Transaction Expenses can be utilized to offset taxable income of one of the Companies and its respective Subsidiaries from the 2004 taxable year, to the extent that such Specified Transaction Expenses do not exceed the taxable income of the Companies and their Subsidiaries on a consolidated basis (within each of the four consolidated groups that includes one of the Operating Subsidiaries, but without combining the four consolidated groups) for the portion of the 2004 taxable year up to and including the Closing Date (based on a closing of the books as of the end of the Closing Date), and to the extent such Specified Transaction Expenses do not exceed twenty-five million dollars (\$25,000,000) in total Specified Transaction Expenses as set forth above, and (y) 90% of any Specified Transaction Expenses to the extent that such Specified Transaction Expenses cannot be utilized to offset taxable income of one of the Companies and its respective Subsidiaries from the 2004 taxable year or to the extent that such Specified Transaction Expenses exceed the taxable income of the Companies and their Subsidiaries on a consolidated basis (within each of the four consolidated groups that includes one of the Operating Subsidiaries, but without combining the four consolidated groups) for the portion of the 2004 taxable year up to and including the Closing Date (based on a closing of the books as of the end of the Closing Date), provided that such Specified Transaction Expenses (together with all Specified Transaction Expenses included in clause (x) of this sentence) do not exceed twenty-five million dollars (\$25,000,000). The Purchaser will make available to the Seller all records and work papers used in preparing the Draft Closing Statement. If the Seller disagrees with the computations reflected on the Draft Closing Statement, the Seller may, within thirty (30) days after receipt of the Draft Closing Statement, deliver a written notice (an "**Objection Notice**") to the Purchaser setting forth the Seller's calculation of the amount of the Net Working Capital as of the Closing Date. The Purchaser and the Seller will use commercially reasonable efforts to resolve any disagreements as to the computations set forth on the Draft Closing Statement, but if they do not obtain a final resolution within thirty (30) days after the Purchaser has received the Objection Notice, the Purchaser and the Seller will jointly retain Ernst & Young LLP, or if such firm refuses to accept such assignment, another mutually acceptable independent public accounting firm with recognized international standing (the "**Firm**"), to resolve any remaining disagreements. The Purchaser and the Seller will direct the Firm to render a determination within thirty (30) days of its retention and the Purchaser and the Seller and their respective agents will cooperate with the Firm during its engagement. The Firm will consider only those items and amounts in the Draft Closing Statement set forth in the Objection Notice which the Purchaser and the Seller are unable to resolve. In resolving any disputed item, the Firm may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The Firm's determination will be based solely on presentations by the Purchaser and the Seller (*i.e.*, not on an independent review), and on the definition of Net Working Capital, Net Capital Expenditures, and Pension Funding Adjustment included herein. The determination of the Firm will be conclusive and binding upon the Purchaser and the Seller. The amount of the Net Working Capital, the Net Capital Expenditures and/or the Pension Funding Adjustment, as finally determined pursuant to this Section 2.8(b), is referred to herein as the "**Actual Net Working Capital**", the "**Actual Net Capital Expenditures**", and the "**Actual Pension Funding Adjustment**," respectively. The Seller and the Purchaser shall share responsibility for the fees and expenses of the Firm as follows:

- (i) if the Firm resolves all of the remaining objections in favor of the Purchaser's position (the sum of the Purchaser's position on each of the Net Working

Capital, the Pension Funding Adjustment and/or the 2004 Adjustment Amount is referred to herein as the "Low Value"), then the Seller shall be responsible for all of the fees and expenses of the Firm;

(ii) if the Firm resolves all of the remaining objections in favor of the Seller's position (the sum of the Seller's position on each of the Net Working Capital, the Pension Funding Adjustment and/or the Net Capital Expenditures is referred to herein as the "High Value"), then the Purchaser shall be responsible for all of the fees and expenses of the Firm; and

(iii) if the Firm neither resolves all of the remaining objections in favor of the Purchaser's position nor resolves all of the remaining objections in favor of the Seller's position (the sum of each of the Actual Net Working Capital, the Actual Net Capital Expenditures, and/or the Actual Pension Funding Adjustment is referred to herein as the "Actual Value"), the Seller shall be responsible for that fraction of the fees and expenses of the Firm equal to (x) the difference between the High Value and the Actual Value over (y) the difference between the High Value and the Low Value, and the Purchaser shall be responsible for the remainder of the fees and expenses of the Firm.

(c) If the Actual Net Working Capital is less than the Estimated Net Working Capital (the shortfall being hereinafter referred to as the "Final Net Working Capital Shortfall"), the Seller will, within five (5) Business Days after the determination thereof, pay to the Purchaser an amount equal to the Final Net Working Capital Shortfall. If Actual Net Working Capital is greater than the Estimated Net Working Capital (the excess being hereinafter referred to as the "Final Net Working Capital Excess"), the Purchaser will, within five (5) Business Days after the determination thereof, pay to the Seller an amount equal to the Final Net Working Capital Excess. If the Actual Net Capital Expenditures are less than the Estimated Net Capital Expenditures (the shortfall being hereinafter referred to as the "Final Net Capital Expenditures Shortfall"), the Seller will, within five (5) Business Days after the determination thereof, pay to the Purchaser an amount equal to the Final Net Capital Expenditures Shortfall. If Actual Net Capital Expenditures are greater than the Estimated Net Capital Expenditures (the excess being hereinafter referred to as the "Final Net Capital Expenditures Excess"), the Purchaser will, within five (5) Business Days after the determination thereof, pay to the Seller an amount equal to the lesser of (x) the Final Net Capital Expenditures Excess and (y) an amount equal to one million dollars (\$1,000,000) less the amount paid to the Seller on account of the Estimated Net Capital Expenditures pursuant to Section 2.8(a). If the Actual Pension Funding Adjustment is less than the Estimated Pension Funding Adjustment (the shortfall being hereinafter referred to as the "Final Pension Funding Adjustment Shortfall"), the Seller will, within five (5) Business Days after the determination thereof, pay to the Purchaser an amount equal to the Final Pension Funding Adjustment Shortfall. If Actual Pension Funding Adjustment is greater than the Estimated Pension Funding Adjustment (the excess being hereinafter referred to as the "Final Pension Funding Adjustment Excess"), the Purchaser will, within five (5) Business Days after the determination thereof, pay to the Seller an amount equal to the Final Pension Funding Adjustment Excess.

(d) Adjustments to the amount of cash paid on the Closing Date as a result of this Section 2.8, and payments of the Final Net Working Capital Shortfall, Final Net Working

Capital Excess, Final Net Capital Expenditures Shortfall, Final Net Capital Expenditures Excess, Final Pension Funding Adjustment Shortfall and Final Pension Funding Adjustment Excess, shall be deemed adjustments to the Purchase Price. The aggregate amount of such adjustments and payments is referred to herein as the **"Final Purchase Price Adjustment."**

ARTICLE III

REPRESENTATIONS OF THE SELLER

The Seller represents and warrants to the Purchaser as follows:

§3.1 **Existence and Good Standing of the Seller; Ownership of Shares.** The Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The Seller is the lawful owner, beneficially and of record, of the Shares, free and clear of all Liens (other than (i) Liens pursuant to this Agreement, (ii) Liens pursuant to the Senior Credit Agreement and related agreements, and (iii) Liens created by the Purchaser). At the Closing, the delivery to the Purchaser of the Shares pursuant to this Agreement will transfer to the Purchaser good and valid title to the Shares, free and clear of all Liens (other than Liens created by the Purchaser).

§3.2 **Authority and Enforceability.** The Seller has the organizational power and authority to execute and deliver this Agreement and the other instruments and agreements to be executed and delivered by it as contemplated hereby. The Seller has the organizational power and authority to consummate the transactions contemplated hereby and by the other instruments and agreements to be executed and delivered by it as contemplated hereby. The execution, delivery and performance of this Agreement, and all other instruments and agreements to be executed and delivered by it as contemplated hereby, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by the Seller's manager and no other organizational or membership action on the part of the Seller is necessary to authorize the execution, delivery and performance of this Agreement and such other instruments and agreements by Seller and the consummation of the transactions contemplated hereby and thereby. This Agreement and all other instruments and agreements to be executed and delivered by the Seller as contemplated hereby, when delivered in accordance with the terms hereof, assuming the due execution and delivery of this Agreement and each such other document by the other parties hereto and thereto, shall have been duly executed and delivered by the Seller and shall be legal, valid and binding obligations of the Seller, enforceable against the Seller in accordance with their terms, except to the extent that their enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the enforcement of creditors' rights generally, to general equitable principles (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law) or to applicable principles of public policy.

§3.3 **Consents and Approvals; No Violations.** (a) Other than as set forth on Schedule 3.3(a) of the Disclosure Letter, the execution and delivery of this Agreement by the Seller and the consummation by the Seller of the transactions contemplated hereby will not result in a violation or breach of, conflict with, require a consent under, constitute (with or without due notice or lapse of time or both) a default under, or result in the creation of any Lien on any of the

properties or assets of the Seller or any Company or any Subsidiary of any Company under: (1) any provision of the operating agreement, certificate of incorporation or by-laws, as the case may be, of the Seller or any Company or Subsidiary of any Company; (2) subject to obtaining and making any of the approvals, consents, notices and filings referred to in paragraph (b) below, any Law or Order applicable to the Seller or any Company or any Subsidiary of any Company or by which any of their respective properties or assets may be bound; or (3) any of the terms, conditions or provisions of any Assumed Contract or any Material Contract to which such Person is a party or by which any of their respective properties or assets may be bound, except in the case of clauses (2) and (3) above for violations, filings, permits, consents, approvals, notices, breaches or conflicts that are not material in the aggregate.

(b) Except for (i) such filings and approvals as may be required pursuant to the HSR Act and the rules and regulations thereunder; (ii) such filings and approvals as may be required pursuant to the ICC Termination Act; (iii)

(iv)

(v) such consents, approvals, actions, filings and notices that are not material in the aggregate, no consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority is necessary or required under any of the terms, conditions or provisions of any Law or Order applicable to the Seller or any Company or any Subsidiary of any Company, or by which any of their respective properties or assets may be bound, for the execution and delivery of this Agreement by the Seller, the performance by the Seller of its obligations hereunder or the consummation of the transactions contemplated hereby.

§3.4 Existence and Good Standing of the Companies; Records. (a) Each of DMIR Holdings, GLF Holdings, B&LE Holdings and P&CD Holdings is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own its property and to carry on its business as now being conducted. Each of DMIR Holdings, GLF Holdings, B&LE Holdings and P&CD Holdings is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the character or location of the properties owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except for such failures to be so qualified or licensed and in good standing as are not material in the aggregate.

(b) The copies of the articles of incorporation and bylaws of each of the Companies and each of their Subsidiaries that were provided to the Purchaser are true, accurate and complete and reflect all amendments thereto. The minute books for each of the Companies and each of their Subsidiaries made available to the Purchaser for review were correct and complete in all material respects as of the date of such review and such minute books contain an accurate record of all material corporate actions of the shareholders and directors (and any committees thereof) taken by written consent or at a meeting within the past ten (10) years. All material corporate actions taken by each of the Companies and each of their Subsidiaries have been duly authorized or ratified.

§3.5 Capital Stock. Each of DMIR Holdings, GLF Holdings, B&LE Holdings and P&CD Holdings has an authorized capitalization consisting of 1000 shares of common stock, par value \$.01 per share, all of which are issued and outstanding. All of the Shares have been duly authorized and validly issued, are fully paid and nonassessable. Except as described above, no shares of capital stock of any Company are authorized, issued, outstanding or reserved for issuance. There are no outstanding or authorized options, warrants, rights, subscriptions, convertible or exchangeable securities, or other commitments, contingent or otherwise, relating to the capital stock of, or other equity or voting interest in, any Company pursuant to which such Company is or may become obligated to issue, deliver or sell or cause to be issued, delivered or sold, shares of its capital stock or other equity or voting interest in such Company or any securities convertible into, exchangeable for, or evidencing the right to subscribe for or acquire, any shares of the capital stock of or other equity or voting interest in such Company.

§3.6 Subsidiaries. (a) Set forth on Schedule 3.6(a) of the Disclosure Letter is a list of each Subsidiary of each of the Companies and the jurisdiction of organization of each such Subsidiary. Each Subsidiary of each of the Companies is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate power and authority to own its property and to carry on its business as now being conducted.

(b) Each Subsidiary of each of the Companies is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the character or location of the properties owned, leased or operated by such Subsidiary or the nature of the business conducted by such Subsidiary make such qualification or licensing necessary, except for such failures to be so qualified or licensed and in good standing as are not material in the aggregate.

(c) Each Subsidiary of each of the Companies has the capitalization set forth on Schedule 3.6(c) of the Disclosure Letter. All of the outstanding shares of capital stock or other equity securities, as the case may be, of each Subsidiary of each of the Companies have been duly authorized and validly issued, are fully paid and nonassessable and are owned, of record and beneficially, by such Company or a Subsidiary of such Company, free and clear of all Liens other than Permitted Liens. There are no outstanding or authorized options, warrants, rights, subscriptions, convertible or exchangeable securities, or other commitments, contingent or otherwise, relating to the capital stock of, or other equity or voting interest in, any Subsidiary of any of the Companies pursuant to which such Subsidiary is or may become obligated to issue, deliver or sell or cause to be issued, delivered or sold, shares of its capital stock or other equity or voting interest in any such Subsidiary or any securities convertible into, exchangeable for, or evidencing the right to subscribe for or acquire any interest of, or other equity or voting interest in, any such Subsidiary, other than such rights granted to one or more of the Companies or one or more of their respective Subsidiaries.

§3.7 Financial Statements. (a) Attached on Schedule 3.7 of the Disclosure Letter are the audited combined balance sheet of the Operating Subsidiaries and their consolidated Subsidiaries as at December 31, 2001 and December 31, 2002, and the related audited combined statements of operations, shareholders' equity and cash flows for the years then ended, all certified by the auditors, and the unaudited combined balance sheet of the Operating Subsidiaries and their consolidated Subsidiaries as at August 31, 2003 and the related unaudited combined statements of operations, shareholders' equity and cash flows for the seven

months then ended (the audited combined balance sheet of the Operating Subsidiaries and their consolidated Subsidiaries as at December 31, 2002 (the "**Balance Sheet Date**") is hereinafter referred to as the "**Balance Sheet**" and the unaudited combined balance sheet of the Operating Subsidiaries and their consolidated Subsidiaries as at August 31, 2003 (the "**Unaudited Balance Sheet Date**") is hereinafter referred to as the "**Unaudited Balance Sheet**"). The financial statements referred to above, including the footnotes thereto, except as described therein, have been prepared in accordance with GAAP consistently followed throughout the periods indicated.

(b) The Balance Sheet fairly presents in all material respects the combined financial position of the Business; and the related statements of operations, shareholders' equity and cash flows fairly present the results of the operations and cash flows of the Business and the changes in its financial position for the periods indicated, except as described therein.

(c) The Unaudited Balance Sheet (and any balance sheet delivered pursuant to Section 5.2 hereof) fairly presents in all material respects (subject to normal year-end adjustments, consistent with prior year-end adjustments, and as otherwise described therein) the combined financial position of the Business at the respective dates thereof; and the related consolidated statement of operations, shareholders' equity and cash flows (and any such statements delivered pursuant to Section 5.2 hereof) fairly present the combined results of operations and cash flows of the Business and the changes in its financial position for the period indicated (except for the absence of notes thereto and subject to normal year-end adjustments, consistent with prior year-end adjustments, and as otherwise described therein).

(d) As of the date of this Agreement, except as set forth on Schedule 3.7(d) of the Disclosure Letter, the Business has no liabilities that would be required to be reflected on a balance sheet prepared in accordance with GAAP (or in any footnotes required to accompany such a balance sheet pursuant to GAAP) except (i) liabilities set forth on the Unaudited Balance Sheet and not heretofore paid or discharged; (ii) to the extent specifically set forth in or incorporated by express reference in any of the other schedules to the Disclosure Letter and (iii) normal liabilities incurred in the ordinary course of business since the date of the Unaudited Balance Sheet.

§3.8 **Personal Properties.** (a) Except as set forth on Schedule 3.8 of the Disclosure Letter, the Companies or one of their respective Subsidiaries has good title to or, in the case of leased assets, a valid leasehold interest in, free and clear of all Liens, except for Permitted Liens, all of the material tangible and intangible personal property and assets reflected in the Unaudited Balance Sheet or thereafter acquired and used in the Business, except for properties and assets disposed of in the ordinary course of business since the Unaudited Balance Sheet Date. The Companies or one of their respective Subsidiaries owns, or has the valid right to use, all of the material tangible personal properties and assets necessary for or otherwise used in the conduct of the Business as currently conducted.

(b) The accounts receivable of the Business have arisen in the ordinary course of business, represent valid obligations owed to the Business, except to the extent of any bad debts that are reserved against on the books and records of the Business.

§3.9 Owned Real Property. Schedule 3.9 of the Disclosure Letter contains a list of all real property with a fair market value in excess of \$250,000 which is owned in whole or in part by the Companies or any of their Subsidiaries (all such property together with all improvements thereon and appurtenances thereto, are herein collectively referred to as the "**Owned Real Property**") and includes the name of the record title holder thereof. Except as set forth on Schedule 3.9 of the Disclosure Letter, the Companies and each of their Subsidiaries have good, indefeasible and marketable fee simple title to all Owned Real Property owned by them, free and clear of all Liens except for Permitted Liens and except for such deficiencies in title to the Owned Real Property as are not material in the aggregate. The Companies or their Subsidiaries have a continuing real property interest in respect of the Owned Real Property which is sufficient for the operations of the Business thereon as presently conducted in the ordinary course of business. With respect to all such Owned Real Property, except as set forth on Schedule 3.9 of the Disclosure Letter: (i) there is no condemnation proceeding or eminent domain proceeding of any kind pending with respect to any material portion of Owned Real Property, nor has Seller received actual written notice of any threat thereof; (ii) all material Owned Real Property is occupied under valid and current certificates of occupancy; (iii) Seller has not received any notice from any applicable Governmental or Regulatory Authority or third party alleging that any material Owned Real Property or the use thereof or the conduct of the Business thereon or therein materially violates any applicable laws, ordinances, and regulations, including any building, zoning, fire or Environmental Laws or codes; and (iv) the Owned Real Property (together with the Leased Property) constitutes all real property and improvements necessary to conduct the Business as presently conducted in the ordinary course.

§3.10 Leased Real Property. Schedule 3.10 of the Disclosure Letter contains a list of all real property leases (each a "**Lease**" and the property leased thereunder being the "**Leased Property**") to which any of the Companies or any of their Subsidiaries is a party (as lessee or lessor) requiring an annual aggregate payment of at least \$50,000. Each Lease set forth on Schedule 3.10 of the Disclosure Letter is in full force and effect and all rents and additional rents due to date on each such Lease have been paid. Except as set forth on Schedule 3.10 of the Disclosure Letter, the Companies and each of their Subsidiaries have valid leasehold interests under the Leases to which they are a party as lessee, free and clear of all Liens except for Permitted Liens. The lessee under each material Lease has not received written notice that it is in default of any rental provisions thereof or any other non-monetary covenants or provisions thereunder, and to the Knowledge of the Seller, there exists no default or event, occurrence, condition or act (including the purchase of the Shares hereunder) which, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under any material Lease. With respect to each Lease and the Leased Property required to be set forth on Schedule 3.10, except as set forth on Schedule 3.10: (i) there is no condemnation proceeding or eminent domain proceeding of any kind pending nor has Seller received actual written notice of any threat thereof; (ii) said Leased Property is occupied under valid and current certificates of occupancy; (iii) Seller has not received any notice from any applicable Governmental or Regulatory Authority or third party alleging that said Leased Property or the use thereof or the conduct of the Business thereon or therein violates any applicable laws, ordinances, and regulations, including any building, zoning, fire or Environmental Laws or codes; and (iv) the Leased Property (together with the Owned Real Property) constitutes all real property and improvements necessary for Seller to conduct the Business as presently conducted in the ordinary course.

§3.11 Material Contracts. (a) Except as set forth on Schedule 3.11(a) of the Disclosure Letter no Company nor any Subsidiary of any Company is a party to, nor is any Company, any Subsidiary of any Company or any of their respective assets bound by, any Contract or group of related Contracts (each, a "Material Contract");

(i) relating to (A) the employment (as an employee or consultant) or termination of employment of any Person by any of the Companies or any of their respective Subsidiaries which may not be terminated without penalty or other obligation in excess of \$50,000 (other than any severance payments required by Law) by such Company or Subsidiary, as the case may be; or (B) the payment to any Person by any of the Companies or any of their respective Subsidiaries of any cash or non-cash bonus award which is contingent on a sale of the Business, any Company, any Subsidiary of any Company or any of their respective assets;

(ii) which contains restrictions with respect to payment of dividends or any other distribution in respect of its capital stock;

(iii) relating to Indebtedness of any of the Companies or any of their respective Subsidiaries;

(iv) limiting the ability of any of the Companies or any of their respective Subsidiaries to manufacture, sell or distribute any product, to engage in any line of business or to compete with any Person;

(v) with any labor union or any employee organization;

(vi) pursuant to which any of the Companies or any of their respective Subsidiaries is entitled or obligated to acquire any assets from a third party with a value in excess of \$500,000 in the aggregate during any twelve-month period;

(vii) pursuant to which any of the Companies or any of their respective Subsidiaries is obligated to provide goods or services to another Person with a total Contract value in excess of \$500,000 in the aggregate in any twelve-month period, unless terminable, without penalty, by the Company or Subsidiary party thereto on not more than sixty (60) days notice;

(viii) that provides for any bonus, pension, profit sharing, retirement or any other form of deferred compensation plan or any stock purchase, stock option, hospitalization insurance or similar plan or practice, whether formal or informal;

(ix) relating to the mortgaging, pledging or otherwise placing a Lien on any of its assets, including documents related to any equipment financing;

(x) under which it has advanced or loaned any other Person amounts in the aggregate exceeding \$50,000 for all such Persons;

(xi) in the form of a license or royalty agreement (excluding licenses or agreements pertaining to "shrink-wrap" or "off-the-shelf" software);

(xii) that provides for a guaranty of any obligation, in the aggregate exceeding \$250,000 for all such guaranties, other than endorsements made for collection;

(xiii) providing outstanding powers of attorney;

(xiv) under which any of the Companies or any of their Subsidiaries is lessor or lessee of, or permits any third party to hold or operate, any personal property with a value for all personal property under such Contract or group of Contracts in excess of \$150,000;

(xv) any confidentiality agreement or similar arrangement;

(xvi) other agreement material to it whether or not entered into in the ordinary course of business, except for this Agreement or the agreements contemplated hereby;

(xvii) pursuant to which any of the Companies or any of their Subsidiaries is obligated to provide or entitled to receive access or services, including trackage, haulage and docking rights, from another rail, maritime or other transportation services or access provider; or

(xviii) :

(b) Except as disclosed on Schedule 3.11(b) of the Disclosure Letter, (i) to Seller's Knowledge, no Material Contract and no Assumed Contract has been breached or canceled by the other party and, to Seller's Knowledge, Seller has not received written notice, or oral notice that the Seller reasonably believes to be credible of any intention to breach any Material Contract or Assumed Contract; (ii) the Seller, the Companies and their Subsidiaries, as applicable, have performed all the obligations required to be performed by them in connection with the Material Contracts and the Assumed Contracts to which they are a party and are not in default under or in breach of any Material Contract or Assumed Contract, and to the Seller's Knowledge no event has occurred which with the passage of time or the giving of notice or both would result in a default or breach thereunder; (iii)

and (iv) each Material Contract and Assumed Contract is legal, valid, binding, enforceable and in full force and effect, except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the enforcement of creditors' rights generally, to general equitable principles (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law) or to applicable principles of public policy.

(c) Seller has made available to Purchaser a true and correct copy of all written Contracts required to be disclosed on Schedule 3.11(a), in each case together with all amendments, waivers or other changes thereto (all of which are disclosed on Schedule 3.11(a)). Schedule 3.11(a) contains an accurate and complete description of all material terms of all oral Contracts referred to therein.

§3.12 Litigation. Except as set forth on Schedule 3.12 of the Disclosure Letter, there is no material action, suit, proceeding at Law or in equity, arbitration or administrative or other proceeding by or, to the Knowledge of the Seller, any material investigation by any Governmental or Regulatory Authority or any other Person pending, or, to the Knowledge of the Seller, threatened against any of the Companies or any of their respective Subsidiaries or any of their properties, assets or rights, or which question the validity or enforceability of this Agreement or any action contemplated herein. Except as set forth on Schedule 3.12 of the Disclosure Letter, there are no material outstanding unsatisfied orders, decrees or stipulations issued by any federal, state, local or foreign judicial or administrative authority in any proceeding to which any of the Companies or their Subsidiaries is or was a party or which apply to any of the assets of the Companies or their Subsidiaries.

§3.13 Taxes. Except as set forth in Schedule 3.13 of the Disclosure Letter:

(a) All material Taxes required to be paid by or with respect to the Companies or any of their Subsidiaries have been timely paid or have been accrued and fully provided for in accordance with GAAP on the books and records of the Companies and their Subsidiaries.

(b) Each federal, state, county, local and foreign Tax Return filed by or with respect to the Companies or any of their Subsidiaries accurately reflects the amount of its liability for Taxes thereunder (in all material respects) and makes all material disclosures required by applicable provisions of Law.

(c) All returns and other reports with respect to a material amount (including any interest or penalties) required to be filed by or with respect to the Companies or any of their Subsidiaries with respect to Taxes (all such returns and other reports, "Tax Returns") have been timely filed (taking into account all applicable extensions).

(d) Neither the Companies nor any of their Subsidiaries are liable for any Taxes attributable to any other member of any group of affiliated corporations that file consolidated returns for federal income tax purposes of which the Companies or any of their Subsidiaries were members before the Closing Date (other than a group of which some or all of the Companies and their Subsidiaries were the only members) by reason of Treasury Regulation Section 1.1502-6 or any comparable provision of state, local or foreign law that provides for joint or several liability, in whole or in part.

(e) With respect to all Tax Returns of the Companies or any of their Subsidiaries, (i) no audit is in progress and no waiver or agreement is in force for the extension of time for the assessment or payment of any Taxes; and (ii) there is no unassessed deficiency proposed in writing against the Companies or any of their Subsidiaries.

(f) Schedule 3.13 of the Disclosure Letter sets forth the status of federal, state, county, local and foreign Tax audits of the Tax Returns of the Companies or any of their Subsidiaries for each fiscal year for which the statute of limitations has not expired, including amounts of any deficiencies and additions to Tax, interest and penalties

indicated on any notices of proposed deficiency or statutory notices of deficiency, and other amounts of any payments made by the Companies or any of their Subsidiaries. Any adjustments made on any federal Tax Return of the Companies or any of their Subsidiaries as a result of any federal Tax audit, amended federal Tax Return or otherwise have been timely and duly reported to each applicable state, county, local and foreign taxing authority to the extent required by Law.

(g) Neither the Companies nor any of their Subsidiaries has agreed to or is required to make any material adjustments after the Closing Date under Section 481(a) of the Code by reason of a change in accounting method or otherwise.

(h) Schedule 3.13 of the Disclosure Letter sets forth all material deferred intercompany transactions of the Companies and any of their respective Subsidiaries, and except as set forth on Schedule 3.13 of the Disclosure Letter, no intercompany gain or excess loss accounts will be triggered by the transactions contemplated hereby.

(i) Schedule 3.13 of the Disclosure Letter sets forth the tax sharing agreements to which the Companies and their Subsidiaries have been a party and which are applicable to tax years ending in 1998 or thereafter.

(j) The facts and assumptions set forth in the tax opinion prepared by White & Case LLP in connection with the split-off (the "Tax Opinion") were accurate on the date of the Tax Opinion, and there are no events that occurred in connection with the March 2001 distribution by Transtar, Inc. ("Transtar") of all of the issued and outstanding shares of stock of the Operating Subsidiaries to Holdings (the "Split-off"), or subsequent to the Split-off, that would cause any of the facts and assumptions set forth in the Tax Opinion to be inaccurate.

(k) Other than the transfers of assets disclosed in the Tax Opinion, there were no transfers of asset by Transtar to the Operating Subsidiaries or the Companies prior to or contemporaneously with the Split-off.

(l) The Seller and its affiliates have treated the Internal Loans, as that term is defined in the Tax Opinion (the "Internal Loans"), as indebtedness for tax and financial reporting purposes.

(m) The Seller, the Companies, and their respective Subsidiaries have not entered into any agreement, understanding, arrangement or substantial negotiation concerning a post-Split-off transfer of any of the outstanding shares of stock of the Seller, the Companies or their Subsidiaries at any time prior to September 23, 2001, other than (i) the transfers of stock of the Subsidiaries to the Companies (ii) the transfer of membership interests in the Seller to the holders of the Seller's 13% Senior Subordinated Notes due 2009 and (iii) the issuance of options in the Seller pursuant to the Great Lakes Transportation, L.L.C. Option Plan to certain employees of the Subsidiaries; provided, that such options represent no greater than 5% of the outstanding equity of the Seller.

(n) To the extent possible, the Seller has applied and intends to apply, in whole and not in part, the provisions of Reg. 1.355-7T (2002 version) as provided in Reg. 1.355-7T(k) with respect to the Split-Off.

§3.14 Intellectual Property. (a) For purposes of this Agreement, "Intellectual Property" shall collectively mean any of the following: (1) U.S. and non-U.S. patents, and applications, inventions (whether or not patentable or reduced to practice) or improvements thereto; (2) registered and unregistered trademarks, service marks, trade names and other indicia of origin and pending applications for registration for the foregoing; (3) registered and unregistered copyrights and mask works and applications for registration therefor; (4) internet domain names; (5) trade secrets, know-how, methods, processes, and other proprietary information; and (6) computer software programs, systems and databases, including all related documentation ("Software").

(b) Except as set forth on Schedule 3.14(b) of the Disclosure Letter, the Companies and their Subsidiaries own all right, title and interest in and to, or have the perpetual, royalty-free right to use, free and clear of all Liens other than Permitted Liens, all Intellectual Property reasonably necessary to conduct the Business as currently conducted.

(c) Except as set forth on Schedule 3.14(c) of the Disclosure Letter, (i) to the Knowledge of the Seller, the conduct of the Business does not infringe or misappropriate any Intellectual Property rights of any Person and, (ii) to the Knowledge of the Seller, no Person is infringing or misappropriating any of the Intellectual Property rights owned or used by the Companies or any of their Subsidiaries.

(d) Except as set forth on Schedule 3.14(d) of the Disclosure Letter, each item of Intellectual Property (other than items that are not material in the aggregate) owned by the Companies or any of their Subsidiaries, which is registered with or issued by a Governmental or Regulatory Authority, has been duly registered with, filed in or issued by the appropriate Governmental or Regulatory Authority and each such registration or issuance is valid and remains in full force and effect, and all applications therefor are pending, in good standing, and all without challenge of any kind. The Companies and their Subsidiaries have taken all actions reasonably necessary to protect, and where reasonably necessary register, each item of Intellectual Property owned by the Companies or any of their Subsidiaries.

(e) Except as set forth on Schedule 3.14(e) of the Disclosure Letter and except for violations that are not material in the aggregate, the Companies and their Subsidiaries have never copied or used any Software in violation of any Intellectual Property right, agreement, license or sublicense and have maintained and protected the Software with appropriate proprietary notices, confidentiality and non-disclosure agreements and such other measures as are reasonably necessary to protect the proprietary, trade secret or confidential information contained therein.

§3.15 Compliance with Laws. The Companies and their respective Subsidiaries are in compliance, in all material respects, with all applicable Laws. Except as set forth on Schedule 3.15 of the Disclosure Letter and except for failures and violations that are not material in the aggregate, within the past five years, the Companies and their respective Subsidiaries have

not been cited, fined or otherwise notified of any asserted past or present failure to comply with any laws and no proceeding with respect to any such violation is pending.

§3.16 Employment Relations. Each of the Companies and each of their respective Subsidiaries is in compliance with all Laws applicable to it respecting employment and employment practices, terms and conditions of employment and wages and hours and is not engaging in any unfair labor practice with respect to employees of any of the Companies or any of their respective Subsidiaries, except for violations that are not material in the aggregate. Except as set forth on Schedule 3.16 of the Disclosure Letter, (i) no material complaint against any of the Companies or any of their respective Subsidiaries is pending before the National Labor Relations Board or the National Mediation Board, (ii) there is no labor strike, dispute, slowdown or stoppage pending against or involving any of the Companies or any of their respective Subsidiaries, (iii) no material grievance or arbitration proceeding arising out of or under any collective bargaining agreement with respect to employees of any of the Companies or any of their respective Subsidiaries is pending, and no claim therefor has been asserted in writing, and (iv) there are no material labor or employment claims or proceedings pending between any of the Companies or any of their respective Subsidiaries and any of their respective employees. As of the date hereof, the only services being provided to the Business under the Transition Services Agreement dated as of March 23, 2001, by and among the Seller, the Companies, Mon Valley Railway Company, Cuyahoga Dock, Inc., GLF Great Lakes Corporation and GLF Credit Corporation and Transtar, Inc. are legal services limited to use of the Transtar Inc. law library and computerized legal research, such legal services not involving the use of any Transtar Inc. personnel. Payroll and benefits administration services are being provided to the Business under the Letter Agreement dated as of December 20, 2002, by and between Seller and Transtar, Inc.

§3.17 Employee Benefit Plans. Each employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), maintained by any of the Companies and/or any of their respective Subsidiaries, or to which any of the Companies and/or any of their respective Subsidiaries contributes (or has an obligation to contribute) or is a party (collectively, the "**Employee Benefit Plans**") is listed on Schedule 3.17 of the Disclosure Letter. Except as set forth on Schedule 3.17 of the Disclosure Letter: (a) each Employee Benefit Plan (other than any Employee Benefit Plan that is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA (a "**Multiemployer Plan**")) is in material compliance with applicable Law and has been administered and operated in all material respects in accordance with its terms; (b) each Employee Benefit Plan (other than any Multiemployer Plan) which is intended to be "qualified" within the meaning of Section 401(a) of the Code materially satisfies all applicable requirements of Section 401(a), has received, or has requested, a favorable determination letter from the Internal Revenue Service and, to the Knowledge of the Seller, no event has occurred and no condition exists that would reasonably be expected to result in the revocation of any such determination; (c) no Employee Benefit Plan covered by Title IV of ERISA (other than any Multiemployer Plan) has been terminated and no proceedings have been instituted to terminate or appoint a trustee to administer any such plan; (d) no "reportable event" (as defined in Section 4043 of ERISA) has occurred with respect to any Employee Benefit Plan covered by Title IV of ERISA (other than any Multiemployer Plan), other than with respect to the transactions contemplated by this Agreement; (e) no Employee Benefit Plan (other than any Multiemployer Plan) subject to

Section 412 of the Code or Section 302 of ERISA has incurred any accumulated funding deficiency within the meaning of Section 412 of the Code or Section 302 of ERISA, or obtained a waiver of any minimum funding standard or an extension of any amortization period under Section 412 of the Code or Section 303 or 304 of ERISA, and each such plan's minimum funding requirements and quarterly contribution requirements have been met for every plan year; (f) each Employee Benefit Plan (other than any Multiemployer Plan) which is a defined benefit plan (within the meaning of Section 3(35) of ERISA) to which the requirements of Code Section 412 apply has timely paid any and all premiums to the Pension Benefit Guaranty Corporation (PBGC) in accordance with Title IV of ERISA and all applicable rules, regulations and pronouncements of the PBGC, and posted bond, set up an escrow account or otherwise provided security if required by Code Section 401(a)(29); (g) no Company nor any Subsidiary of such Company, nor, to the Knowledge of the Seller, any other "disqualified person" or "party in interest" (as defined in Section 4975(e)(2) of the Code and Section 3(14) of ERISA, respectively) has engaged in any transactions in connection with any Employee Benefit Plan that would reasonably be expected to result in the imposition of a material penalty pursuant to Section 502(i) of ERISA or a tax pursuant to Section 4975 of the Code; (h) the Companies and their respective Subsidiaries have made all contributions to each Multiemployer Plan required by the terms of any agreement between any such employer and any such Multiemployer Plan or required under any applicable collective bargaining agreement; (i) no Company nor any Subsidiary of such Company has incurred any unsatisfied withdrawal liability under Part 1 of Subtitle E of Title IV of ERISA to any Multiemployer Plan; (j) no material claim, action or litigation has been made, commenced or, to the Knowledge of the Seller, threatened in writing with respect to any Employee Benefit Plan or any fiduciary with respect to any Employee Benefit Plan (other than routine claims for benefits payable in the ordinary course, and appeals of the denial of any such claims); (k) no benefit under any Employee Benefit Plan will increase as a result of the consummation of the transaction contemplated by this Agreement, nor will the vesting, or the timing of any individual's entitlement to any benefit, under any Employee Benefit Plan accelerate as a result of the consummation of the transaction contemplated by this Agreement; (l) employer securities (within the meaning of Section 407(d)(1) of ERISA) are not a material asset of any Employee Benefit Plan (other than a Multiemployer Plan), and the acquisition and holding of any employer securities have been in material compliance with ERISA and the Code; and (m) any trust or other arrangement that is intended to be a voluntary employees' beneficiary association (within the meaning of Code Section 501(c)(9)) satisfies all of the applicable requirements of Code Section 501(c)(9).

§3.18 Environmental Laws and Regulations. (a) For purposes of this Agreement:

(i) "Company Property" shall mean the Vessels and any real property and improvements, in each case currently or formerly owned, leased or operated by any of the Companies or any of their respective Subsidiaries.

(ii) "Environmental Law(s)" shall mean all applicable foreign, federal, state, regional, county or local, statutes, laws, regulations, ordinances, codes, rules, judgments, orders, decrees, permits, concessions, grants, agreements, licenses or other requirements or restrictions of law pertaining to protection of the indoor or outdoor environment, health, safety of persons, management or use of natural resources, protection or use of

surface water and groundwater, conservation, wildlife, waste management, Hazardous Materials or pollution (including regulation of releases and disposal to air, land, water and groundwater) now or hereafter in effect, and includes the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.*, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986, and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 *et seq.*, Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 *et seq.*, Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401 *et seq.*, Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*, Hazardous Materials Transportation Act 49 U.S.C. App. §§ 1801 *et seq.*, Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §§ 651 *et seq.*, Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*, Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*, National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*, Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) *et seq.*, any similar or implementing state law, and all successor statutes, amendments, rules, orders, directives and regulations promulgated thereunder.

(iii) “**Hazardous Material**” shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant, condition, object or material which is or may be hazardous to human health or safety or the environmental due to its ignitability, corrosivity, reactivity, explosiveness, toxicity, carcinogenicity, infectiousness, radioactivity or other harmful or potentially harmful properties or effects, including all of those substances, chemicals, compounds, products, solids, gases, liquids, wastes, byproducts, pollutants, contaminants, conditions, objects and materials and combination thereof which are now or hereafter listed or defined as hazardous or toxic, or are regulated, pursuant to Environmental Laws and includes asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof).

(iv) “**Release**” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Material into the indoor or outdoor environment, including the abandonment or discarding of barrels, drums, containers, tanks, and other receptacles containing or previously containing any Hazardous Material.

(b) Except as set forth in Schedule 3.18(b) of the Disclosure Letter, Seller represents and warrants as of the Closing Date that: (i) the operations, assets, processes, practices, equipment and activities of the Companies, the Operating Subsidiaries and the Business comply with, and each of the Vessels complies with, applicable Environmental Laws in all material respects; (ii) the Companies, the Operating Subsidiaries and the Business and each of the Vessels have timely obtained and are in compliance in all material respects with all permits, licenses, registrations and other governmental approvals and authorizations required by Environmental Laws and have timely filed all reports and other documents required by applicable Environmental Laws; (iii) the Companies, the Operating Subsidiaries and the Business have not, and have no Knowledge of any Person who has, caused any Release, threatened Release or disposal of any Hazardous Material at or from the Company Property and the Company Property is not adversely affected by any Release, threatened Release or disposal

of a Hazardous Material for which the Companies or Operating Subsidiaries are responsible; (iv) the Companies, the Operating Subsidiaries and the Business have received no notice and are not aware of any material violation (whether alleged or proven), claim, demand, litigation, proceeding or governmental investigation (whether pending or threatened) arising from applicable Environmental Laws relating to the Companies, the Operating Subsidiaries, the Business or the Company Property; (v) there are no past or present events, conditions, circumstances, activities, practices, incidents, actions, or plans relating to the Companies, the Operating Subsidiaries or the Business or any of the Vessels that could reasonably be expected to materially interfere with or prevent compliance or continued compliance with applicable Environmental Laws or that could reasonably be expected to give rise to any legal liability (whether statutory or common law) or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, notice of violation, study or investigation based on or related to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling or the Release or threatened Release into the indoor or outdoor environmental of any Hazardous Material; (vi) neither the Companies, the Operating Subsidiaries nor the Business have, either expressly or by operation of law, assumed or undertaken any liability, including any obligation for corrective or response action, of any Person relating to Environmental Laws; (vii) no property, real or personal, whether or not owned or operated by the Companies, the Operating Subsidiaries or the Business, is materially adversely impacted by any Release, threatened Release or disposal of a Hazardous Material generated, owned, possessed, handled or transported by the Companies, the Operating Subsidiaries or the Business; (viii) the Companies, the Operating Subsidiaries and the Business are not, and will not become, subject to any material liability under Environmental Laws arising out of occurrences, events, actions or conditions which exist or have taken place prior to the Closing Date; and (ix) no Lien relating to any Environmental Law or Hazardous Materials has attached to the property currently owned, leased or operated by the Companies, Operating Subsidiaries or the Business or any asset of the Companies, the Operating Subsidiaries or the Business.

§3.19 Permits. Except as set forth on Schedule 3.19 of the Disclosure Letter, the Companies and each of their respective Subsidiaries have obtained and possess all reasonably necessary permits, certificates, licenses, consents or authorizations of any Governmental or Regulatory Authority (each, a "Permit") and have made all reasonably necessary registrations or filings with or notices to any Governmental or Regulatory Authority for the lawful ownership of their respective properties and assets or the operation of their respective businesses as presently conducted, except for such Permits, registrations, filings and notices as are not material in the aggregate. Except as set forth on Schedule 3.19 of the Disclosure Letter, all such Permits are valid and in full force and effect, the holder of each Permit is in substantial compliance with their requirements, and no proceeding is pending or, to the Seller's Knowledge, threatened to revoke or amend any of such Permits. Except as indicated on Schedule 3.19, no Permits will be impaired or in any way affected by the execution and delivery of this Agreement or the consummation of the transactions contemplated herein, except for such Permits as are not material in the aggregate.

§3.20 No Changes Since Unaudited Balance Sheet Date. Except as set forth on Schedule 3.20 of the Disclosure Letter or as contemplated by this Agreement, since the Unaudited Balance Sheet Date, (x) there has not occurred any event, change or development that

has had, or would reasonably be expected to have, a Material Adverse Effect on the Business and (y) none of the Companies or their respective Subsidiaries have:

(a) suffered any theft, damage, destruction or casualty to any material assets, whether or not covered by insurance or suffered any substantial destruction of its books and records;

(b) amended or restated its charter or by-laws (or comparable organizational or governing documents);

(c) permitted any of its assets to be subjected to any Lien other than a Permitted Lien or other Liens that are not material in the aggregate;

(d) sold, leased, assigned, transferred or otherwise disposed of any tangible assets in excess of \$100,000 individually and \$250,000 in the aggregate, except for sales, transfers or other dispositions of inventory in the ordinary course of business or other Permitted Disposals, or canceled without fair consideration any material debts or material claims owing to or held by it;

(e) made or granted any bonus or any compensation increase, or made or granted any pension, retirement or profit sharing distribution or payment of any kind, or made or granted any increase in any employee benefit plan or arrangement, or amended or terminated any existing employee benefit plan or arrangement or adopted any new employee benefit plan or arrangement, except in the ordinary course of business or in accordance with a pre-existing Contract or Employee Benefit Plan;

(f) made any other change in employment terms for any of its directors, officers, and employees in the ordinary course of business consistent with past practice other than changes that are not material in the aggregate;

(g) made any material change in any method of accounting or auditing practice other than those changes required by GAAP or applicable Law;

(h) made any distributions to the Seller or any parties other than the Companies and their Subsidiaries or redeemed, purchased or otherwise acquired any shares of its capital stock;

(i) issued, sold or transferred any interest in the Companies or their Subsidiaries or any rights to acquire any interest in the Companies or their Subsidiaries, other than pursuant to this Agreement;

(j) sold, assigned, licensed or transferred any proprietary rights owned by, issued to or licensed to it or disclosed any confidential information (other than pursuant to agreements requiring the recipient to maintain the confidentiality of and preserving all its rights in such confidential information);

(k) suffered any extraordinary losses or, except in the ordinary course of business consistent with past practice, waived any rights of material value;

(l) entered into, amended or terminated any Material Contract or taken any other material action or entered into any other material transaction other than in the ordinary course of business consistent with past practice;

(m) made any loans or advances to, or guarantees for the benefit of, any Person in excess of \$50,000 in the aggregate for all Persons;

(n) made charitable contributions, pledges, association fees or dues in excess of \$100,000 in the aggregate; or

(o) committed to do any of the foregoing.

§3.21 Insurance. The Seller maintains insurance policies with respect to the Business against such risks and in such amounts as management of the Business has reasonably determined to be prudent in accordance with industry practices. Schedule 3.21 of the Disclosure Letter lists and briefly describes each insurance policy maintained with respect to the Business's properties, assets and business, together with a claims history for the past five years plus any insurance year that has not been closed in accordance with the terms of the relevant insurance policy; no policy of insurance is placed with any "captive" insurer. All insurance policies are in full force and effect, are enforceable against the issuer thereof, and will not terminate or lapse as a result of the transactions contemplated hereby. All premiums due thereunder have been paid in full and neither the Seller nor any of its Subsidiaries has received any written notice of cancellation of any such coverage.

§3.22 Brokers' or Finders' Fees. Except for Goldman, Sachs & Co. and The Blackstone Mergers & Acquisitions Advisory Group, whose fees will be paid by the Seller, no agent, broker, Person or firm acting on behalf of either the Seller or any of its Subsidiaries is, or will be, entitled to any commission or brokers' or finders' fees from the Seller or any of its Subsidiaries in connection with any of the transactions contemplated by this Agreement.

§3.23 United States Citizen. The Seller, and each of GLF Holdings and its Subsidiaries (other than GLF Credit Corp.), is, and shall remain through the Closing Date, a United States Citizen.

§3.24 Vessels.

(b)

§3.25 Customers and Suppliers. Except as set forth on Schedule 3.25 of the Disclosure Letter, Seller, the Companies and their Subsidiaries have not received any written or oral communication since the Unaudited Balance Sheet Date that:

(a) any current customer of the Business that accounted for over 10% of the total consolidated revenue of the Business for the year ended December 31, 2002 will terminate its business relationship with the Business or

(b) any current material supplier to the Business will terminate its business relationship with the Business.

§3.26 Affiliate Transactions. Except as set forth on Schedule 3.26 of the Disclosure Letter, no Affiliate of the Seller, the Companies or any of their Subsidiaries is a party to any agreement, contract, commitment or transaction with the Companies or any of their Subsidiaries or that pertains to the Business or has any interest in any property, real or personal or mixed, tangible or intangible, that is used in or pertains to the Business.

§3.27 No Other Representations or Warranties. Except for the representations and warranties contained in this Article III or any other provision of this Agreement (as modified

and supplemented by the Disclosure Letter) or in any other written agreement, none of the Seller, its Subsidiaries or Affiliates or any other Person acting on behalf of any of them (x) has made any express or implied representation or warranty (including any implied representation or warranty as to the condition, merchantability, suitability or fitness for a particular purpose) regarding the Business, the Seller or any of its Affiliates, any of the Companies or any of their respective Subsidiaries, any of the assets owned or used by any of the foregoing Persons or the transactions contemplated by this Agreement, or (y) has made any representation or warranty, express or implied, as to the accuracy or completeness of any information contained, or referred to, in any materials that have been provided to the Purchaser or any of its Affiliates, agents or representatives. No officer, director, employee, investor, agent or representative of the Seller or any of the Companies or any of their respective Subsidiaries shall have any liability or responsibility for any representations or warranties contained in this Agreement. The disclosure of any matter or item in the Disclosure Letter shall not be deemed to constitute an acknowledgment that such matter or item is required to be disclosed or is material to the representations and warranties set forth in this Agreement or that such matter would, or would be reasonably likely to, result in a Material Adverse Effect. No representation or warranty of the Seller contained herein shall be deemed to be untrue or incorrect, and the Seller shall not be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, circumstance or event which is disclosed in response to another representation or warranty of the Seller in this Agreement in a manner that is sufficient to reasonably inform the Purchaser of information required to be disclosed in the Schedule or Section of this Agreement related to such representation or warranty.

ARTICLE IV

REPRESENTATIONS OF THE PURCHASER

The Purchaser represents and warrants to the Seller as follows:

§4.1 Existence and Good Standing of the Purchaser; Power and Authority. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Purchaser has the corporate power and authority to execute and deliver this Agreement and the other instruments and agreements to be executed and delivered by the Purchaser as contemplated hereby. The Purchaser has the corporate power and authority to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement, and all other instruments and agreements to be executed and delivered by the Purchaser as contemplated hereby, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by the Purchaser's Board of Directors and no other corporate or shareholder action on the part of the Purchaser is necessary to authorize the execution, delivery and performance of this Agreement and such other instruments and agreements by the Purchaser and the consummation of the transactions contemplated hereby and thereby. This Agreement and all other instruments and agreements to be executed and delivered by the Purchaser as contemplated hereby, when delivered in accordance with the terms hereof, assuming the due execution and delivery of this Agreement and each such other document by the other parties hereto and thereto, shall have been duly executed and delivered by the Purchaser and shall be valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their terms, except to the extent

that their enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the enforcement of creditors' rights generally, to general equitable principles (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law) or to applicable principles of public policy.

§4.2 Consents and Approvals; No Violations. (a) The execution and delivery of this Agreement by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby will not result in a violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default under, or result in the creation of any Lien upon any of the properties or assets of the Purchaser under: (1) any provision of the certificate of incorporation or by-laws of the Purchaser; (2) subject to obtaining and making any of the approvals, consents, notices and filings referred to in paragraph (b) below, any Law or Order applicable to the Purchaser or by which any of its properties or assets may be bound; or (3) any of the terms, conditions or provisions of any Contract to which the Purchaser is a party, or by which any of its properties or assets may be bound, except in the case of clauses (2) and (3) above for such violations, filings, permits, consents, approvals, notices, breaches or conflicts which would not reasonably be expected to have a Material Adverse Effect on the Purchaser.

(b) Except for (i) such filings and approvals as may be required pursuant to the HSR Act and the rules and regulations thereunder, (ii) such filings and approvals as may be required pursuant to the ICC Termination Act (iii) tr

and (iv) tr

no consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority is necessary or required under any of the terms, conditions or provisions of any Law or Order applicable to the Purchaser, or by which any of its properties or assets may be bound, for the execution and delivery of this Agreement by the Purchaser, the performance by the Purchaser of its obligations hereunder or the consummation of the transactions contemplated hereby, other than those which the failure to obtain or make would not reasonably be expected to have a Material Adverse Effect on the Purchaser.

§4.3 Purchase for Investment. The Purchaser will acquire the Shares for its own account for investment and not with a view toward, or for the purpose of, any resale or distribution thereof. The Purchaser acknowledges that the sale of the Shares hereunder has not been registered under the Securities Act and that the Shares may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act, pursuant to an exemption therefrom or in a transaction not subject thereto.

§4.4 Brokers' or Finders' Fees. No agent, broker, Person or firm acting on behalf of the Purchaser is, or will be, entitled to any commission or brokers' or finders' fees from the Purchaser, the Companies or the Seller or from any Affiliate of the Purchaser, the Companies or the Seller, in connection with any of the transactions contemplated by this Agreement.

§4.5 Financial Capability. The Purchaser (i) has, and at the Closing will have, sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the Purchase Price and any expenses incurred by the Purchaser in connection with the transactions contemplated by this Agreement; (ii) has, and at the Closing will have, the resources and capabilities (financial and otherwise) to perform its obligations hereunder; and (iii) has not incurred any obligation, commitment, restriction or liability of any kind, absolute or contingent, present or future, which would impair or adversely affect such resources and capabilities.

ARTICLE V

COVENANTS

§5.1 Conduct of Business. (a) During the period from the date of this Agreement until the earlier of the Closing Date or the date this Agreement is terminated, (x) the Seller shall cause each of the Companies and each of their respective Subsidiaries to conduct their respective operations according to their ordinary and usual course of business, (y) the Seller shall cause each of the Companies and each of their respective Subsidiaries to make in a timely manner all pension contributions as required by Internal Revenue Code Section 412, including all minimum required annual and quarterly contributions and to make any and all required contributions to any Multiemployer Plans in which any Company or any of their Subsidiaries participates, and (z) except as set forth on Schedule 5.1(a) of the Disclosure Letter, as is required by applicable Law, as may be approved by the Purchaser (which approval shall not be unreasonably withheld, delayed or conditioned) or as is otherwise contemplated by this Agreement, the Seller shall cause each of the Companies and each of their respective Subsidiaries to refrain from taking any of the following actions:

- (i) amending or restating its charter or by-laws (or comparable organizational or governing documents);
- (ii) permitting any of its assets to be subjected to any Lien other than a Permitted Lien and except Liens that are not material in the aggregate;
- (iii) selling, leasing, assigning, transferring or otherwise disposing of any tangible assets with a fair market value in excess of \$100,000 individually or \$250,000 in the aggregate, except for sales, transfers or other dispositions of inventory in the ordinary course of business or other Permitted Disposals, or canceling without fair consideration any material debts or material claims owing to or held by it;
- (iv) making or granting any bonus or any compensation increase, or making or granting any pension, retirement or profit sharing distribution or payment of any kind, or making or granting any increase in any employee benefit plan or arrangement, or amending or terminating any existing employee benefit plan or arrangement or adopting any new employee benefit plan or arrangement, except in the ordinary course of business or in accordance with a pre-existing Contract or Employee Benefit Plan;

(v) making any other change in employment terms for any of its directors, officers, and employees except for immaterial changes in the ordinary course of business consistent with past practice; provided, that the Companies and their respective Subsidiaries shall be entitled to hire and fire employees in the ordinary course of business consistent with past practice;

(vi) making any material change in any method of accounting or auditing practice other than those changes required by GAAP or applicable Law;

(vii) making any distributions to the Seller or any parties other than the Companies and their Subsidiaries other than dividends or distributions payable solely in cash;

(viii) issuing, selling or transferring any interest in the Companies or their Subsidiaries or any rights to acquire any interest in the Companies or their Subsidiaries, other than pursuant to this Agreement;

(ix) selling, assigning, licensing or transferring any proprietary rights owned by, issued to or licensed to it other than in the ordinary course of business consistent with past practice;

(x) entering into, amending or terminating any Material Contract or taking any other material action or entering into any other material transaction, in each case, other than in the ordinary course of business consistent with past practice;

(xi) conducting its cash management customs and practices other than in the ordinary course of business consistent with past practice (including with respect to collection of accounts receivable, payment of accounts payable and accrued expenses);

(xii) conducting its practices regarding the purchasing of inventory and supplies and the making of repairs and the performance of maintenance of property, in each case other than in the ordinary course of business consistent with past practice;

(xiii) making any loans or advances to, or guarantees for the benefit of, any Person in excess of \$50,000 in the aggregate for all Persons;

(xiv) making charitable contributions, pledges, association fees or dues in excess of \$100,000 in the aggregate;

(xv) making any material tax election;

(xvi) acquiring the business, capital stock, other equity interests or substantially all the assets of another Person;

(xvii) granting any severance, retention or termination pay arrangement or amend any such existing agreement;

(xviii) entering into any agreement or arrangement containing any provision or covenant granting any concessions or rights to any railroad or other Person with respect to the use of any rail lines, yards or other fixed railroad property of the Company or any of its Subsidiaries (whether through divestiture of lines, the grant of trackage or haulage rights or otherwise);

(xix) entering into any partnership, joint venture or similar agreement;

(xx) make commitments for capital expenditures to be made following the Closing Date that exceed 120% of Residual Capital Expenditure Budget; provided that Seller shall consult with Purchaser prior to entering into any commitment with respect to capital expenditures to be made following the Closing not contained in the 2004 Capital Expenditures Budget and in excess of \$100,000; and

(xxi) committing to do any of the foregoing.

(b) Notwithstanding anything contained in this Agreement to the contrary, the Seller shall, through the Closing Date, cause the Companies and each of their respective Subsidiaries to

(i) take measures, in the ordinary course of business consistent with past practice, to prevent the Business from suffering any theft, damage, destruction or casualty to any material assets of the Business,

(ii) pay, prior to the Closing Date, any excise tax, penalty, liquidated damages or other liability required to be made to any governmental agency or multiemployer plan or fund for failure to make any Employee Benefit Plan contributions with respect to any Employee Benefit Plan or corresponding fund or trust required under the Code, ERISA, or the terms of any Employee Benefit Plan, or to otherwise to comply with the Code or ERISA; pay prior to the appropriate due date any premium payments required to be made to the Pension Benefit Guaranty Corporation ("PBGC") under ERISA or applicable regulations, rules or pronouncements issued by PBGC or any other governmental agency; and comply with Section 4043 of ERISA by timely notifying the PBGC of any reportable events,

(iii) maintain insurance policies with respect to the Business against such risks and in such amounts as management of the Business has reasonably determined to be prudent in accordance with industry practices,

(iv)

(v) take such measures as they have previously taken or as they otherwise deem prudent, in the ordinary course of business, to comply, in all material respects, with all applicable Laws; and

(vi) take such measures as they have previously taken or as they otherwise deem prudent to protect the confidential information of the Operating Subsidiaries, the Companies and their respective Subsidiaries.

(c) Notwithstanding anything contained in this Agreement to the contrary:

(i) the Companies (and their respective Subsidiaries) and the Seller shall be permitted to maintain the Business's cash management system and procedures (as currently conducted) through the Closing Date;

(ii) the Companies and their respective Subsidiaries shall be permitted to borrow funds from the Seller or their Affiliates as is necessary to operate the Business in the ordinary course of business and repay such borrowings in the ordinary course of business;

(iii) the Seller shall be permitted to withdraw all cash, cash equivalents and other short-term investments of the Companies and their respective Subsidiaries through the Closing Date;

(iv) the Companies and their respective Subsidiaries shall be permitted to enter into one or more hedging agreements in respect of fuel and/or other commodities used by them in the ordinary course of business; and

(v) the Companies and their respective Subsidiaries shall be entitled to /

§5.2 Review of the Business; Confidentiality. (a) The Seller shall cause each of the Companies and each of their respective Subsidiaries to permit the Purchaser and its representatives to have, after the date of execution of this Agreement, reasonable access during regular business hours to the Vessels, the premises and to the books and records of the Business, each of the Companies and each of their Subsidiaries and the Seller shall cause the officers, employees and other representatives of each of the Companies and each of their Subsidiaries to furnish the Purchaser with such financial and operating data and other information with respect to the Business as the Purchaser shall from time to time reasonably request; provided that such investigation and assistance shall not unreasonably disrupt the operations of the Seller or any of

the Companies and their respective Subsidiaries. In particular, the Seller shall, and shall cause each of the Companies and their Subsidiaries to, permit Purchaser's consultants, upon reasonable notice, with such reasonable access as is necessary or desirable for such consultants to (i) provide a confirmatory actuarial report approximately one month prior to Closing setting forth the funding, accounting and compliance status of the pension plans and/or other benefit plans and (ii) make both underwater and above water inspection of each of the Vessels at the Purchaser's expense and obtain a certificate from each master that, to his knowledge, there has been no underwater or other damage to the relevant Vessel that has not been repaired in accordance with best ship maintenance practice. Notwithstanding the foregoing, nothing in this Section 5.2 shall require the Seller, the Companies and their respective Subsidiaries to (x) violate the terms of any agreement to which such Person is party (or by which such Person is bound) or any applicable Law, or (y) disclose any information to the Purchaser if such disclosure would violate any Antitrust Laws or otherwise cause competitive harm to such disclosing party or its Affiliates if the transactions contemplated by this Agreement are not consummated.

(b) Within 45 days following the end of each fiscal quarter, the Seller shall deliver to the Purchaser an unaudited combined balance sheet of the Operating Subsidiaries and their consolidated Subsidiaries as at the end of such fiscal quarter and the related unaudited combined statements of operations, shareholders' equity and cash flows for the three months then ended. Within 135 days following the end of the 2003 fiscal year, the Seller shall deliver to the Purchaser an audited combined balance sheet of the Operating Subsidiaries and their consolidated Subsidiaries as at the end of such year and the related audited combined statements of operations, shareholders' equity and cash flows for the year then ended. Each such financial statement will be prepared in accordance with GAAP consistently followed throughout the period indicated. The Seller shall also deliver to the Purchaser monthly financial statements of the Business in form and substance substantially similar to the monthly financial statements delivered to its stockholders prior to the date of this Agreement, as included in the information disclosed to the Purchaser prior to the date hereof, in the same period following the end of each month as was the practice prior to the date of this Agreement, but no later than thirty (30) days after the end of each such month. Notwithstanding anything to the contrary set forth in this Section 5.2(b), any delivery made to the Purchaser hereunder shall be made within three (3) Business Days following delivery of such financial statements to representatives of Holdings.

(c) Any information obtained by the Purchaser pursuant to paragraph (a) and (b) above or with respect to the Seller and/or any of their Affiliates shall be subject to the terms and conditions set forth in that certain Confidentiality Agreement, dated March 4, 2003, by and between Canadian National Railway Company, the parent company of the Purchaser, and Goldman, Sachs & Co. (on behalf of the Seller), the terms of which are incorporated herein by reference (the "Confidentiality Agreement"). Effective upon, and only upon the Closing, the Purchaser's obligations under the Confidentiality Agreement shall terminate with respect to information relating to the Companies and their Subsidiaries; provided that the Purchaser acknowledges that any and all other information provided to it by the Seller or its representatives (as defined in the Confidentiality Agreement) concerning the Seller and/or any of its Affiliates (other than the Companies and their Subsidiaries) shall remain subject to the terms and conditions of the Confidentiality Agreement after the Closing Date. Notwithstanding anything contrary in this Agreement, the Purchaser, Seller and the Companies and their Subsidiaries (and each employee, representative, or other agent of the Purchaser, Seller and the Companies and

their Subsidiaries) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to the Purchaser, Seller and the Companies and their Subsidiaries relating to such tax treatment and tax structure except to the extent that it is required to be kept confidential to comply with applicable federal or state securities laws. This paragraph is intended to reflect the understanding of the Purchaser, Seller and the Companies and their Subsidiaries that this transaction has not been offered under "conditions of confidentiality" as that phrase is used in Treasury Regulation §§ 1.6011-4(b)(3)(i) and 301.6111-2(c)(i), and shall be interpreted in a manner consistent therewith.

(d) Until the Closing, each of the Purchaser and the Seller shall promptly inform the other in writing of any material variances discovered by such party or its representatives in the representations and warranties of the Seller contained in this Agreement.

(e) Prior to December 1, 2003, the Seller shall deliver to the Purchaser a draft capital expenditures budget for the Seller, the Companies, the Operating Subsidiaries and their respective Subsidiaries. The Purchaser shall be entitled to consult with the Seller with respect to such draft budget, and the Seller shall, in good faith, consider the comments of the Purchaser with respect to such draft budget. Following such consultation with the Purchaser, if any, and in any event prior to January 1, 2004, the Seller shall deliver to the Purchaser the final 2004 capital expenditures budget for the Companies, the Operating Subsidiaries and their respective Subsidiaries (the "**2004 Capital Expenditures Budget**")

§5.3 Commercially Reasonable Efforts. Subject to the terms and conditions contained herein, the Seller and the Purchaser shall, and the Seller shall cause the Companies and each of their respective Subsidiaries to, cooperate and use their respective commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to make, or cause to be made, as soon as practicable after the date of this Agreement, all filings necessary, proper or advisable under applicable Laws, in each case to consummate and make effective the transactions contemplated by this Agreement in the most expeditious manner practicable (including their respective commercially reasonable efforts to obtain, prior to the Closing Date, all Permits, consents, approvals, authorizations, qualifications and Orders as are necessary for consummation of the transactions contemplated by this Agreement, to remove any injunctions or other impediments or delays (legal or otherwise) and to fulfill the conditions to consummation of the transactions contemplated hereby set forth in Articles VI and VII of this Agreement).

§5.4 Regulatory Matters. (a) In addition to the agreements set forth in Section 5.3, the Purchaser shall use its commercially reasonable efforts to obtain approval of the transactions contemplated by this Agreement prior to the Closing Date under all applicable Antitrust Laws by the applicable Governmental or Regulatory Authorities, and shall make any required filing of a Notification and Report Form pursuant to the HSR Act (and to make such other filings as are required under other applicable Antitrust Laws) with respect to the transactions contemplated hereby as promptly as practicable (but not later than the date Purchaser files its Application for any regulatory approvals required from the STB) and shall request early termination of the waiting period under the HSR Act. In furtherance of the foregoing, the Purchaser shall provide the Seller with the reasonable opportunity to review and comment on any filings required under any applicable Antitrust Laws (including any required

filing of a Notification and Report Form pursuant to the HSR Act) in advance of any filing to any Governmental or Regulatory Authorities in connection with this Agreement, such filings only redacted where necessary under the Antitrust Laws and shall take all reasonable actions necessary to obtain approval of the transactions contemplated by this Agreement including (i) entering into negotiations with any Antitrust Authority; (ii) promptly complying with (or properly seeking to reduce the scope of) all formal or informal requests for additional information or documentary material received by it or any of its Affiliates from any Antitrust Authority; and (iii) keeping the Seller fully informed of any material communication with any Antitrust Authority.

(b) As soon as reasonably practicable after the date of this Agreement, the Purchaser shall, in accordance with its obligations under Section 5.3, prepare and present to the Surface Transportation Board all necessary or appropriate filings and other presentations in connection with seeking any STB approval, exemption or other authorization necessary to consummate the transactions contemplated by this Agreement, and shall (i) prosecute such filings and other presentations with reasonable diligence, (ii) diligently oppose, to the extent reasonable, any objections to, appeals from or petitions to reconsider or reopen any such STB approval by Persons not party to this Agreement, and (iii) take all such further action as in the reasonable judgment of the Purchaser may facilitate obtaining a final order or orders of the STB approving such transactions consistent with this Agreement and the transactions contemplated herein. It is understood and agreed that the Purchaser shall use its commercially reasonable efforts to make its initial filings of the type referred to in the immediately preceding sentence within ten (10) Business Days following the date of this Agreement. Notwithstanding any provision to the contrary in this Agreement, the Purchaser shall not be required to take any action in connection with seeking STB approval that would cause, directly or indirectly, the transactions contemplated by this Agreement to be reviewed by the STB in any way other than as a "minor" transaction or would (1) require inclusion of any rail carriers or rail properties material to the Purchaser or any of its Subsidiaries, (2) change the amount or nature of the Purchase Price or (3) impose on the Purchaser or any of its Subsidiaries any terms or conditions (including labor protective provisions, but excluding conditions heretofore imposed by the United States Interstate Commerce Commission in *New York Dock Railway-Control-Brooklyn Eastern District*, 360 I.C.C. 60 (1979) and any other condition offered, volunteered or agreed to by the Purchaser) that would materially and adversely affect the Purchaser's reasonably anticipated financial benefits of the transactions contemplated by this Agreement to the Purchaser.

(c)

(d) The Seller, in accordance with its obligations under Section 5.3, shall cooperate with Purchaser to achieve the foregoing to the extent reasonably requested by the Purchaser, including (x) assisting in the preparation of all filings, documents or other public statements (i) submitted to the relevant Antitrust Authorities or any other legal or legislative proceeding or deliberation that could in the reasonable opinion of the Purchaser affect the likelihood of obtaining approval from the relevant Antitrust Authorities (ii) related to any STB proceedings or rulemaking or any other legal or legislative proceeding or deliberation that could in the reasonable opinion of the Purchaser affect the likelihood of obtaining STB approval, or (iii) {

, and (y) taking, at Purchaser's sole expense, such actions as are reasonably requested by Purchaser and which do not unreasonably interfere with the operation of the Business in the ordinary course, including those actions set forth on Schedule 5.4(d) attached to the Disclosure Letter, in order to implement the transaction structure contemplated by, or to obtain any approval required by, this Section 5.4. In furtherance of the foregoing, the Purchaser shall, subject to the terms and conditions of this Agreement, have final authority over the development, presentation and conduct of the STB case and submissions to and discussions with the ; and Antitrust Authorities, including over decisions as to whether to agree to or acquiesce in conditions. The Seller (i) shall take no regulatory or legal action (or have any communication with Antitrust Authorities, the STB,

or any other regulatory or political authority or personnel) relating to this Agreement or the transactions contemplated hereunder without the Purchaser's prior consent and (ii) shall not have any other communication with Antitrust Authorities, the STB or

with respect to any other matter that would reasonably be expected to affect the consideration of the transaction contemplated by this Agreement without the Purchaser's prior consent (which shall not be unreasonably delayed or withheld); provided, however, that to the extent necessary or advisable for the Business, the Seller may, in the ordinary course of business, take regulatory and legal action with (and have communications with) Antitrust Authorities (other than the U.S. Department Justice and Federal Trade Commission attorneys reviewing the transactions contemplated hereby pursuant to the HSR Act) and the after consulting, to the extent practicable, with the Purchaser in advance.

(e) In addition to the agreements set forth in Sections 5.3, 5.4(a), 5.4(b), 5.4(c) and 5.4(d), if any administrative, judicial or legislative action or proceeding is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement as violative of any Antitrust Law, the ICC Termination Act or any United States maritime law, the Seller and the Purchaser shall use commercially reasonable efforts to cooperate to contest and

resist any such action or proceeding, and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order (whether temporary, preliminary or permanent) that is in effect and that restricts, prevents or prohibits consummation of the transactions contemplated by this Agreement, including by pursuing all mutually agreeable avenues of administrative and judicial appeal.

§5.5 Public Announcements. Neither the Seller nor the Purchaser shall, nor shall any of their respective representatives or Affiliates, without the approval of the other party, issue any press releases or otherwise make any public statements with respect to the transactions contemplated by this Agreement and/or with respect to any other party to this Agreement or any of their respective representatives or Affiliates, except as may be required by applicable Law or by obligations pursuant to any listing agreement with any national securities exchange so long as such party has used commercially reasonable efforts to obtain the approval of the other party prior to issuing such press release or making such public disclosure. Nothing in this Section 5.5 shall limit the Purchaser's right to make public statements in connection with its efforts to comply with Section 5.4, so long as Seller is given prior or contemporaneous notice of such statements.

§5.6 Post-Closing Information. For a period of six (6) years following the Closing, upon reasonable written request delivered to the Purchaser, the Purchaser shall, and shall cause the Companies and their respective Subsidiaries to, at the Seller's sole expense, afford to the Seller, their Affiliates and their respective representatives, reasonable access during normal business hours to the personnel, properties, books and records of the Companies and their respective Subsidiaries to the extent that such personnel, properties, books and records relate to any period prior to and including the Closing Date (which books and records shall be preserved by the Purchaser at its sole expense for such period). The Purchaser agrees, for a period of six (6) years following the Closing, not to destroy or otherwise dispose of any such books and records unless the Purchaser first offers in writing to surrender such books and records to the Seller (at the sole expense of the Seller) and the Seller does not agree in writing to take possession thereof during the 90 calendar day period after such offer is made by the Purchaser to the Seller.

§5.7 Indemnification of Officers and Directors; Insurance. The Purchaser shall indemnify, for a period of six (6) years following the Closing Date and on terms no less favorable than are set forth in their respective Certificate of Incorporation and by-laws (or other applicable organizational documents) immediately prior to the Closing, the individuals who at or prior to the date hereof were present or former directors, officers, employees or agents of any Company or any of its Subsidiaries at the Closing (each, together with such person's heirs, executors or administrators, a "**Company Covered Person**") with respect to service prior to the Closing. For six (6) years after the Closing, the Purchaser shall cause to be maintained in effect by the Companies and their Subsidiaries (a) policies of directors' and officers' liability insurance or (b) a run off or tail policy of insurance or endorsement, in either case in respect of acts or omissions occurring prior to the Closing, and such policies shall contain provisions no less favorable with respect to indemnification of a Company Covered Person relating to service prior to the Closing than the policies of the Business existing on the date hereof. The rights of each Company Covered Person hereunder shall be in addition to, and not in limitation of, any other rights such Company Covered Person may have under the Certificate of Incorporation or by-laws

of any of DMIR Holdings, GLF Holdings, B&LE Holdings and P&CD Holdings and their Subsidiaries, any other indemnification arrangement, applicable Law or otherwise. The provisions of this Section 5.7 shall survive the consummation of the transactions contemplated hereby and are expressly intended to benefit each of the Company Covered Persons (and their respective heirs and legal representatives), who are express third party beneficiaries hereof.

§5.8 Related Party Payments. All liabilities and obligations of the Companies and their Subsidiaries to the Seller and its Affiliates (other than the Companies and their Subsidiaries) shall be paid or otherwise settled, and terminated, prior to or concurrently with the Closing.

§5.9 Updating the Disclosure Letter. The Seller may deliver to the Purchaser prior to the Closing Date (but no later than twenty (20) Business Days prior to the Closing Date) one or more written updates or supplements to the Disclosure Letter reflecting events, matters, items or facts occurring after the date hereof. To the extent that such updated or supplemented Disclosure Letter reflects events, matters, items or facts which have occurred after the date hereof, and the Purchaser shall not have notified the Seller of its belief that such events, matters, items or facts would reasonably be likely to result in a Material Adverse Change or a Material Adverse Effect (taking into account any previously delivered updates or supplements) within twenty (20) Business Days of receipt (provided that at such time Seller provides notice to the Purchaser that the Purchaser must respond within such time period), then the Disclosure Letter shall be deemed to be amended as of the Closing Date to include the information on such updated or supplemented Disclosure Letter. Promptly following the satisfaction, or waiver in writing, of the conditions set forth in Article VI and VII (other than those conditions that are to be satisfied at Closing) and at Closing, the Seller shall deliver to the Purchaser a written update to the Disclosure Letter reflecting events, matters, items or facts occurring after the date hereof. Unless the Purchaser notifies the Seller prior to the Closing of its belief that such events, matters, items or facts would reasonably be likely to result in a Material Adverse Change or a Material Adverse Effect (taking into account any previously delivered updates or supplements), then the Disclosure Letter shall be deemed to be amended as of the Closing Date to include the information on such updated Disclosure Letter.

§5.10

§5.11 Tax Matters. (a) Except as otherwise provided in (b) below, the Seller, at its cost and expense, shall be responsible for preparing and filing all Tax Returns for the Companies and their Subsidiaries for Tax periods ending on or prior to the Closing Date except to the extent such Tax Returns are not yet due (taking into account all applicable extensions). Such Tax Returns will report the operations of the Companies and their Subsidiaries consistent with past practices. Prior to the Closing Date, the Seller shall cause the Companies and their Subsidiaries to pay any Taxes imposed on the Companies and their Subsidiaries attributable to any taxable periods ending on or prior to the Closing Date, except to the extent such Taxes are not yet due and payable and are properly accrued as a current liability on the financial statements of the Companies and their Subsidiaries. The Seller shall also cause the Companies and their

respective Subsidiaries to pay all liabilities that are due and payable prior to the Closing Date imposed on the Companies or their respective Subsidiaries for payments attributable to Taxes that are owed by the Companies or their respective Subsidiaries under the Reorganization Agreement.

(b) The Purchaser, at its cost and expense, shall be responsible for preparing and filing all Tax Returns due following the Closing Date.

(c) The Purchaser shall, and shall cause its Affiliates (including the Companies, the Operating Companies and their respective Subsidiaries after the Closing) to, (i) treat the Split-off as a tax-free distribution pursuant to Section 355 of the Code and (ii) treat the Internal Loans as indebtedness for all Tax and financial reporting purposes. Following the Closing, the covenants contained in this Section 5.11(c) shall survive until the date which is 30 days following the expiration of the applicable statute of limitations.

§5.12 Mitigation. The Seller shall, and shall cause the Business to, promptly take all such actions as the management of the Companies, after consultation with the Purchaser, deem in their reasonable judgment to be commercially reasonable in response to any event, fact or circumstance specified in clauses (i) through (xii) of the definition of Material Adverse Change or Material Adverse Effect in Article I hereof to mitigate the adverse effects of such events, facts, or circumstances.

§5.13 No-Shop. Seller and its affiliates shall not (i) solicit, initiate or encourage the submission of any proposal or offer from any third party relating to any merger or consolidation with or into, liquidation, dissolution or recapitalization of, or acquisition or purchase of assets of the Companies and their Subsidiaries (other than as permitted in Section 5.1(a)(iii) hereof), or any direct or indirect acquisition or purchase of the Shares or any equity interest in or similar transaction or business combination involving the Seller or the Companies or their Subsidiaries or (ii) participate in any negotiations regarding, furnish any information with respect to, or assist or participate in, any effort or attempt by any third party to do or seek any of the foregoing, but will immediately notify the Purchaser if any third party attempts to make any proposal to or initiate any discussion or negotiation with any of them concerning any of the foregoing.

ARTICLE VI

CONDITIONS TO THE PURCHASER'S OBLIGATIONS

§6. Conditions to the Purchaser's Obligations. The purchase of the Shares by the Purchaser on the Closing Date is conditioned on satisfaction or waiver by the Purchaser, at or prior to the Closing, of the following conditions:

§6.1 Truth of Representations and Warranties. The representations and warranties of the Seller contained in this Agreement shall be true and correct on and as of the Closing Date as though made at that time, except to the extent that such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date), except to the extent all breaches of such representations and warranties do not have, in the aggregate, a Material Adverse Effect.

§6.2 Performance of Agreements. All of the agreements and covenants of the Seller to be performed on or prior to the Closing Date pursuant to this Agreement shall have been duly performed in all material respects.

§6.3 No Injunctions. No preliminary or permanent injunction, decree or other Order shall have been issued or be the subject of deliberation by any court or by any Governmental or Regulatory Authority which prohibits or would prohibit the consummation of the transactions contemplated by this Agreement and which is in effect on the Closing Date.

§6.4 HSR Act Waiting Periods; Non-Maritime Governmental Consents.
(a) All applicable waiting periods under the HSR Act with respect to the transactions contemplated by this Agreement shall have expired or been terminated.

(b) The STB shall have issued a decision (which decision has not been stayed or enjoined) that (A) constitutes a final non-appealable Order approving, exempting or otherwise authorizing consummation of the transactions contemplated by this Agreement (or subsequently presented to the STB by agreement of the Seller and the Purchaser) as may require such authorization and (B) does not (1) require inclusion of any rail carriers or rail properties material to the Purchaser or any of its Subsidiaries, (2) impose on the Purchaser or any of its Subsidiaries any other terms or conditions (including labor protective provisions, but excluding conditions heretofore imposed by the United States Interstate Commerce Commission in *New York Dock Railway-Control-Brooklyn Eastern District*, 360 I.C.C. 60 (1979) and any other condition offered, volunteered or agreed to by the Purchaser) that would materially and adversely affect the Purchaser's reasonably anticipated financial benefits of the transactions contemplated by this Agreement to the Purchaser, or (3) change the amount or nature of the Purchase Price.

§6.5 Other Non-Maritime Consents. All other non-maritime material consents, authorizations, Orders or approvals of, and filings or registrations with, any Governmental or Regulatory Authority and all third party consents, each as set forth on Schedule 6.5 of the Disclosure Letter, shall have been obtained or made and shall be in full force and effect on the Closing Date, including the consent of US Steel, Transtar, Inc. and any other applicable parties to the assignment of the rights under the Assumed Contracts and the Material Contracts, as applicable, all in form and substance reasonably acceptable to the Purchaser.

§6.6 Statutes; Orders. No Law or Order of any kind shall have been enacted, entered, promulgated or enforced by any court or Governmental or Regulatory Authority which would prohibit or materially delay the consummation of the transactions contemplated by this Agreement or has the effect of making them illegal.

§6.7

§6.8 No Material Adverse Effect. After the execution of this Agreement, there shall not have occurred any event or occurrence that results in or would be reasonably likely to result in a Material Adverse Effect on the Business.

ARTICLE VII

CONDITIONS TO THE SELLER'S OBLIGATIONS

§7. Conditions to the Seller's Obligations. The sale of the Shares by the Seller on the Closing Date is conditioned upon satisfaction or waiver by the Seller, at or prior to the Closing, of the following conditions:

§7.1 Truth of Representations and Warranties. The representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as if made on such date (except for representations and warranties that relate to a specific date, which shall be true and correct in all material respects as of such date).

§7.2 Performance of Agreements. All of the agreements and covenants of the Purchaser to be performed on or prior to the Closing Date pursuant to this Agreement shall have been duly performed in all material respects.

§7.3 No Injunctions. No preliminary or permanent injunction, decree or other Order shall have been issued or be the subject of deliberation by any court or by any Governmental or Regulatory Authority which prohibits the consummation of the transactions contemplated by this Agreement and which is in effect at the Closing.

§7.4 HSR Act Waiting Periods; Governmental Consents. (a) All applicable waiting periods under the HSR Act with respect to the transactions contemplated by this Agreement shall have expired or been terminated.

(b) Any and all approvals, exemptions and authorizations required by the ICC Termination Act with respect to the transactions contemplated by this Agreement shall have been obtained.

(c) Any and all approvals, authorizations or actions described in Section 6.7 with respect to the transactions contemplated by this Agreement shall have been obtained.

§7.5 Other Consents. All other material consents, authorizations, Orders or approvals of, and filings or registrations with, any Governmental or Regulatory Authority and all third party consents, each as set forth on Schedule 7.5 of the Disclosure Letter, shall have been obtained or made and shall be in full force and effect on the Closing Date including the consent of US Steel, Transtar, Inc. and any other applicable parties to the assignment of the rights and under the Assumed Contracts and the Material Contracts, as applicable, all in form and substance reasonably acceptable to the Seller (which such consents of US Steel, Transtar, Inc. and such other applicable parties shall be deemed to be acceptable to the Seller if they do not affect the rights of, or impose any obligations (other than post-closing obligations imposed solely on the Companies or their Subsidiaries) on, any Affiliate of the Seller).

§7.6 Statutes; Orders. No Law or Order of any kind shall have been enacted, entered, promulgated or enforced by any court or Governmental or Regulatory Authority which prohibits the consummation of the transactions contemplated by this Agreement or has the effect of making them illegal.

ARTICLE VIII

NON-SURVIVAL OF REPRESENTATIONS

§8.1 Non-Survival of Representations. The respective representations and warranties of the Seller and the Purchaser contained in this Agreement or any other agreement or instrument delivered pursuant to or in connection with this Agreement shall not survive the Closing (or, subject to Section 9.2(b) and Section 9.2(c), earlier termination of this Agreement) and there shall be no liability in respect thereof on the part of any party or any of their respective Affiliates, officers, directors, employees, advisors, consultants, agents or other representatives (irrespective of whether or not such liability may have accrued prior to, at or after the Closing);

ARTICLE IX

TERMINATION AND ABANDONMENT

§9.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned, at any time prior to the Closing:

(a) by mutual consent of the Seller, on the one hand, and of the Purchaser, on the other hand;

(b) by any Party if the Closing shall not have occurred by June 15, 2004 (the "Outside Date"); provided that the right to terminate this Agreement under this Section 9.1(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement shall be the cause of the failure of the Closing to occur on or before such date and provided, further, that (i) in the event the STB has not issued a decision with respect to the transactions contemplated by this Agreement, the Outside Date shall be extended until July 15, 2004 and (ii) in the event the STB shall have issued a decision that constitutes an Order approving, exempting or otherwise authorizing consummation of the transactions contemplated by this Agreement but such Order is not yet final and non-appealable, the Outside Date (as it may be extended under Section 9.1(b)(i)) shall be extended until the date which is 120 days following the issuance of such Order by the STB.

(c) by either the Seller, on the one hand, or the Purchaser, on the other hand, if there has been a material breach of any covenant or a material breach of any representation or warranty of the Purchaser or the Seller, respectively, which breach would cause the failure of any condition precedent set forth in Article VI or VII, as the case may be; provided that any such breach of a covenant or representation or warranty has not been cured within twenty (20) Business Days following receipt by the breaching party of written notice of such breach;

(d) by any Party, if there shall be any Law of any competent authority that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or if any Order of any competent authority (including the STB,

1) prohibiting or denying approval of such transactions is entered and such Order shall become final and non-appealable;

(e) by the Purchaser, if the STB shall have issued an Order (which Order shall not have been stayed or enjoined) that (A) constitutes a final non-appealable Order approving, exempting or otherwise authorizing consummation of the transactions contemplated by this Agreement (or subsequently presented to the STB by agreement of the Seller and the Purchaser), as may require such authorization and (B) imposes any conditions or requirements contrary to Section 6.4(b)(B); or

(f) by any Party, if the STB makes a decision to review the transactions contemplated by this Agreement in any way other than as a "minor" transaction; provided that no Party shall terminate this Agreement pursuant to this Section 9.1(f) at any time later than 30 days after such STB decision becomes public.

§9.2 Effect of Termination. (a) If this Agreement is terminated pursuant to Section 9.1 by the Purchaser, on the one hand, or the Seller, on the other hand, written notice thereof shall be given to the other party specifying the provision of Section 9.1 pursuant to which such termination is made and describing (in reasonable detail) the event(s) giving rise to such termination, and this Agreement shall be terminated and become void and of no effect with no further liability on the part of any party or any of their respective Affiliates, officers, directors, employees, advisors, consultants, agents or other representatives (except that the provisions of Section 5.2(b) (Confidentiality), Section 5.5 (Public Announcements), Section 9.1 (Termination),

this Section 9.2, Section 10.1 (Expenses), Section 10.2 (Governing Law/Jurisdiction) and Section 10.12 (Waiver of Jury Trial) shall survive any termination of this Agreement and continue in full force and effect).

(b) Upon the termination of this Agreement:

(i) if this Agreement is validly terminated (x) pursuant to Section 9.1(b) at a time when the conditions to the Purchaser's obligations set forth in Sections 6.4 or 6.7 have not been satisfied or waived or the conditions to the Purchaser's obligations set forth in Section 6.3 or 6.6 have not been satisfied or waived due to an action of (or failure to act by) _____, STB, _____ or any Antitrust Authority, (y) pursuant to Section 9.1(d) due to an action (or failure to act by) _____, STB, _____ or any Antitrust Authority or (z) pursuant to Section 9.1(e), then the Seller shall be entitled to 50% of the Deposit (provided that the failure to fulfill any such condition shall not be a result of the Seller's failure to satisfy any of its obligations under this Agreement) and the Purchaser shall be entitled to the remainder of the Deposit (provided that the failure to fulfill any such condition shall not be a result of the Purchaser's failure to satisfy any of its obligations under this Agreement);

(ii) if this Agreement is validly terminated pursuant to Section 9.1(b), (d) or (f), other than as contemplated by Section 9.2(b)(i) above, then the Purchaser shall be entitled to the Deposit; or

(iii) if this Agreement is validly terminated (X) by the Purchaser pursuant to Section 9.1(c), then the Purchaser shall be entitled to the Deposit and (Y) by the Seller pursuant to Section 9.1(c), then the Seller shall be entitled to the Deposit, in each case, free and clear of the restrictions set forth in this Agreement.

The parties expressly acknowledge and agree that the payment or retention of any amount pursuant to Section 9.2(b)(i) or (ii) as contemplated above shall operate to preclude the Seller and the Purchaser from pursuing any and all other rights, claims and remedies available to it under this Agreement or applicable law and constitute liquidated damages. The parties expressly acknowledge and agree that the parties right to any payment under Section 9.2(b)(iii) shall not operate to preclude any party from pursuing any and all rights, claims and remedies available to it under this Agreement or applicable law.

(c) Notwithstanding the foregoing to the contrary, neither party shall be entitled to claim, and hereby expressly waives any right to, any and all lost profits, lost revenues, lost opportunities and consequential, punitive and other special damages (regardless of legal theory). Except as stated to the contrary in the last paragraph of Section 9.2(b), termination of this Agreement shall not relieve either party from liability or damages resulting from any breach of this Agreement.

ARTICLE X

MISCELLANEOUS

§10.1 Expenses. The parties hereto shall pay all of their own expenses relating to the transactions contemplated by this Agreement, including the fees and expenses of their respective counsel and financial advisers.

§10.2 Governing Law; Jurisdiction. THIS AGREEMENT AND THE LEGAL RELATIONS BETWEEN THE PARTIES HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF. THE STATE OR FEDERAL COURTS LOCATED WITHIN THE STATE AND COUNTY OF NEW YORK SHALL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN THE PARTIES HERETO, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY AND THE PARTIES CONSENT TO AND AGREE TO SUBMIT TO THE JURISDICTION OF SUCH COURTS. EACH OF THE PARTIES HEREBY WAIVES AND AGREES NOT TO ASSERT IN ANY SUCH DISPUTE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM THAT (I) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, (II) SUCH PARTY AND THE PROPERTY OF SUCH PARTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURTS OR (III) ANY LITIGATION OR OTHER PROCEEDING COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM. THE PARTIES HEREBY AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING IN THE MANNER PROVIDED IN SECTION 10.4, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF AND HEREBY WAIVE ANY OBJECTIONS TO SERVICE ACCOMPLISHED IN THE MANNER HEREIN PROVIDED.

§10.3 Table of Contents; Captions. The table of contents and the Article and Section captions used herein are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

§10.4 Notices. Any notice or other communication required or permitted under this Agreement shall be deemed to have been duly given (i) five (5) Business Days following deposit in the mails if sent by registered or certified mail, postage prepaid, (ii) when sent, if sent by facsimile transmission, if receipt thereof is confirmed by telephone, (iii) when delivered, if delivered personally to the intended recipient and (iv) two (2) Business Days following deposit with a nationally recognized overnight courier service, in each case addressed as follows:

if to the Seller, to:

Great Lakes Transportation LLC
P.O. Box 68
135 Jamison Lane
Monroeville, PA 15146
Facsimile: (412) 829-6603
Attn: John E. Giles

with a copy (which shall not constitute notice) to:

Great Lakes Transportation Holdings, L.P.
c/o Blackstone Transportation Company, Inc.
345 Park Avenue, 31st Floor
New York, NY 10154
Facsimile: (212) 583-5716
Attn: James J. Mossman

with a further copy (which shall not constitute notice) to:

White & Case LLP
1155 Avenue of the
Americas New York,
NY 10036 Facsimile:
(212) 534-8113
Attn: William F. Wynne, Jr., Esq.

and if to the Purchaser, to:

Grand Trunk Corporation
c/o Canadian National Railway Company
935 de la Gauchetiere Street W.
Montreal, Quebec H3B 2M9
Tel: 514-399-2963
Fax: 514-399-7786
Attn: Claude Mongeau,
Executive Vice President and Chief Financial Officer

with copies (which shall not constitute notice) to:

Canadian National/Illinois Central Railroad
455 N. Cityfront Plaza Drive
Chicago, Illinois 60611-5317
Tel: 312-755-7613
Fax: 312-755-7669
Attn: Cynthia A. Bergmann, Counsel U.S. Legal Affairs

and:

Freeborn & Peters
311 S. Wacker Drive
Suite 3000
Chicago, Illinois 60606
Tel: 312-360-6505
Fax: 312-360-6570
Attn: Peter Mason

or such other address or number as shall be furnished in writing by any such party.

§10.5 Parties in Interest; Assignment. This Agreement may not be transferred, assigned, pledged or hypothecated by any party hereto other than by operation of law; provided that the Purchaser may assign its rights (but not its obligations) to purchase all or any portion of the Business to any of its Affiliates or Notwithstanding the foregoing, each of the parties hereto shall remain liable for all of its respective obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

§10.6 Counterparts. This Agreement may be executed in two or more counterparts, all of which taken together shall constitute one instrument.

§10.7 Entire Agreement. This Agreement, including the other documents referred to herein which form a part hereof, contains the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

§10.8 Amendments. This Agreement may not be changed, and any of the terms, covenants, representations, warranties and conditions cannot be waived, except pursuant to an instrument in writing signed by the Purchaser and the Seller or, in the case of a waiver, by the party waiving compliance.

§10.9 Severability. If any term, provision, agreement, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, agreements, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.

§10.10 Third Party Beneficiaries. Except as set forth in Section 5.7, each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the parties hereto.

§10.11 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by all parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

§10.12 Waiver of Jury Trial. Each of the Purchaser and the Seller hereby waives, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any litigation as between the parties directly or indirectly arising out of, under or in connection with this Agreement or the transactions contemplated hereby or disputes relating hereto.

§10.13 Transfer Taxes. All stamp, transfer, documentary, sales and use, value added, registration and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement or any other transaction contemplated hereby (collectively, the "Transfer Taxes") shall be paid by the Purchaser, and the Purchaser shall, at its own expense, procure any stock transfer stamps required by, and properly file on a timely basis all necessary tax returns and other documentation with respect to, any Transfer Tax and provide to the Seller evidence of payment of all Transfer Taxes.

§10.14 Time. Notwithstanding anything to the contrary set forth in this Agreement, if the last day permitted for the giving of any notice or the performance of any act required or permitted under this Agreement falls on a day which is not a Business Day, the time for the giving of such notice or the performance of such act will be extended to the immediately succeeding Business Day.

§10.15 No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing.

§10.16 Rights Cumulative. All rights and remedies of each of the parties under this Agreement will be cumulative, and the exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy available under this Agreement or applicable Law.

§10.17 Dissolution of the Seller. The Purchaser acknowledges that the Seller may be dissolved in accordance with applicable Law after satisfaction of the parties' obligations under Section 2.8. Until satisfaction of such obligations, Seller shall retain \$10,000,000 of the Purchase Price, set aside for the satisfaction of any such obligations. The Purchaser agrees to, at the request of the manager(s) or members of the Seller and solely at the expense of the requesting party (paid to the Purchaser in full in cash), take, or cause to be taken, from time to time, such actions as may be reasonably requested in connection with such dissolution. Effective

upon satisfaction of the parties' obligations under Section 2.8, (i) each party hereby unconditionally and irrevocably acquits and fully and forever releases and discharges the other party hereto from any and all claims, demands, causes of action, obligations, remedies, suits, damages and liabilities of any nature whatsoever, whether known or unknown, suspected or claimed, whether arising under common law, in equity or under statute which such party ever had or now has against the other party (including as a result of the dissolution of the Seller); (ii) the Purchaser unconditionally and irrevocably acquits and fully and forever releases and discharges the members of the Seller from any and all claims, demands, causes of action, obligations, remedies, suits, damages and liabilities of any nature whatsoever in respect of, relating to or arising out of this Agreement, the documents and transactions contemplated hereby or the contemplated dissolution of the Seller or Holdings, whether known or unknown, suspected or claimed, whether arising under common law, in equity or under statute which the Purchaser ever had, now has or may have against any member of the Seller; and (iii) the obligations of the parties hereto under the covenants set forth herein shall terminate; provided, further, the obligations of the Purchaser pursuant to Section 5.6, 5.7 and 5.11(c) and the Purchaser Side Letter,

shall survive in accordance with their terms.

IN WITNESS WHEREOF, each of the Purchaser and the Seller has caused its corporate name to be hereunto subscribed by its officer thereunto duly authorized all as of the day and year first above written.

GRAND TRUNK CORPORATION

By: Claude Mongeau
Name: Claude Mongeau
Title: Executive Vice President and
Chief Financial Officer

GREAT LAKES TRANSPORTATION LLC

By: Great Lakes Transportation Holdings L.P.,
its Managing Member

By: Blackstone Transportation Company,
Inc., its General Partner

By: Robert L. Friedman
Name: Robert L. Friedman
Title: Vice President

IN WITNESS WHEREOF, each of the Purchaser and the Seller has caused its corporate name to be hereunto subscribed by its officer thereunto duly authorized all as of the day and year first above written.

GRAND TRUNK CORPORATION

By: _____
Name:
Title:

GREAT LAKES TRANSPORTATION LLC

By: Great Lakes Transportation Holdings L.P.,
its Managing Member

By: Blackstone Transportation Company,
Inc., its General Partner

By: Robert L. Friedman
Name: Robert L. Friedman
Title: Vice President

LIST OF EXHIBITS

Exhibit A	-	Form of Escrow Agreement
Exhibit B	-	Form of Opinion of Seller's Outside Counsel
Exhibit C		Form of Holdings Side Letter
Exhibit D	-	Form of Opinion of Purchaser's Outside Counsel
Exhibit E		Form of Purchaser Side Letter

EXHIBIT A

October 19, 2003

Great Lakes Transportation LLC
P.O. Box 68
135 Jamison Lane
Monroeville, PA 15146
Facsimile: (412) 829-6603
Attn: John E. Giles

Grand Trunk Corporation
c/o Canadian National Railway Company
935 de la Gauchetière Street W.
Montreal, Quebec H3B 2M9
Tel: 514-399-2963
Fax: 514-399-7786
Attn: Claude Mongeau,
Executive Vice President and Chief Financial Officer

Ladies and Gentlemen:

Reference is made to that certain Stock Purchase Agreement dated as of October 19, 2003 (the "Purchase Agreement") by and between Grand Trunk Corporation (the "Purchaser") and Great Lakes Transportation LLC (the "Seller"), providing for the sale of all of the issued and outstanding capital stock of the Companies. Capitalized terms used in this letter agreement and not defined herein shall have the meanings provided in the Purchase Agreement. References in this letter agreement to "Sections" shall, unless otherwise stated, be to sections of the Purchase Agreement.

You have requested, and we have agreed, to serve as Escrow Agent under Section 2.3(b) of the Purchase Agreement. This letter agreement is the Escrow Agreement provided under said Section 2.3(b) and sets forth the terms and conditions under which we and you agree that the escrow will be maintained and released.

A. The Deposit Escrow.

1. Establishment of Deposit Escrow. We acknowledge that upon our receipt of the sum of TWELVE MILLION DOLLARS (\$12,000,000) pursuant to Section 2.3(b) of the Purchase Agreement, wired to our account pursuant to our wire instructions set forth on Schedule 1, we shall hold in escrow in a separate interest bearing client escrow account that sum including interest, if any, accrued thereon (the amount so deposited, plus accrued interest from time to time, the "Deposit Escrow").

2. Release of Deposit Escrow upon Joint Certification. Prior to the Closing, we will release the Deposit Escrow to the Purchaser, the Seller or a combination thereof, in accordance with the terms and conditions of the Joint Certification (as defined below) and pursuant to the wiring instructions of the account to which such disbursement(s) shall be made as directed by the Purchaser or Seller, as the case may be, in writing, within two (2) Business Days of our receipt of a written certification by the Purchaser and Seller (a "Joint Certification"), certifying that the Purchaser, on the one hand and/or the Seller, on the other hand, has terminated the Purchase Agreement pursuant to Article 9 thereof. The Purchaser and the Seller covenant to each other that they will draft the instructions in the Joint Certification in such a manner as to release the Deposit Escrow in accordance with the terms of the Purchase Agreement.

3. Release of Deposit Escrow at Closing. Upon the Closing under the Purchase Agreement, upon receipt of Joint Certification that the Closing has occurred, we will release to the Seller the Deposit Escrow.

4. Other Releases. Prior to the Closing, we will release the Deposit Escrow (i) in accordance with, and not later than two (2) Business Days following our receipt of, a Joint Certification directing us to do so and specifying the recipient of the Deposit Escrow or (ii) upon a final Order with respect to the distribution of the Deposit Escrow (a "Final Order"), of which we have received both a copy of the Final Order and a copy of the relevant docket from the applicable court demonstrating the finality of such Order.

B. Notices. All certifications, notices, demands, requests, consents, approvals or other communications (collectively, "Notices") required or permitted to be given hereunder or that are given with respect to this Agreement shall be in writing and shall be personally served, delivered by a nationally recognized overnight delivery service with charges prepaid, or transmitted by hand delivery, addressed as set forth below, or to such other address as such party shall have specified most recently by written Notice. Notice shall be deemed given upon actual delivery only; provided, that rejection of or refusal to accept any Notice shall be deemed to be receipt of the Notice as of the date of such rejection or refusal.

if to the Seller, to:

Great Lakes Transportation LLC
P.O. Box 68
135 Jamison Lane
Monroeville, PA 15146
Facsimile: (412) 829-6603
Attn: John E. Giles

with a copy (which shall not constitute notice) to:

Great Lakes Transportation Holdings, L.P.
c/o Blackstone Transportation Company, Inc.
345 Park Avenue, 31st Floor
New York, NY 10154
Facsimile: (212) 583-5716
Attn: James J. Mossman

with a further copy (which shall not constitute notice) to:

White & Case LLP
1155 Avenue of the
Americas New York, NY
10036 Facsimile: (212) 534-
8113
Attn: William F. Wynne, Jr., Esq.

and if to the Purchaser, to:

Grand Trunk Corporation
c/o Canadian National Railway Company
935 de la Gauchetiere Street W.
Montreal, Quebec H3B 2M9
Tel: 514-399-2963
Fax: 514-399-7786
Attn: Claude Mongeau,
Executive Vice President and Chief Financial Officer

with copies (which shall not constitute notice) to:

Canadian National/Illinois Central Railroad
455 N. Cityfront Plaza Drive
Chicago, Illinois 60611-5317
Tel: 312-755-7613
Fax: 312-755-7669
Attn: Cynthia A. Bergmann, Counsel U.S. Legal Affairs

and:

Freeborn & Peters
311 S. Wacker Drive
Suite 3000
Chicago, Illinois 60606
Tel: 312-360-6505
Fax: 312-360-6570
Attn: Peter Mason

C. Miscellaneous

1. If any dispute arises between the Purchaser and the Seller not specifically addressed herein, or if we are uncertain as to our obligations hereunder, we shall have the right but not the obligation to refrain from taking any action other than to continue to hold in escrow in such account the amount held under this agreement until otherwise directed by Joint Certification or in accordance with a Final Order, of which we have received both a copy of the applicable Order and a copy of the relevant docket from the applicable court demonstrating the finality of such Order.

2. If we do not receive written instructions as to our obligations pursuant to a Joint Certification or Final Order within sixty (60) days of termination of the Purchase Agreement, we shall have the right but not the obligation to commence proceedings for a Final Order. In the event that the Escrow Agent commences an action or proceeding and, pursuant thereto, pays into court the Deposit Escrow, the Escrow Agent shall thereupon be fully released and discharged from all further duties, liabilities and obligations under this Agreement

3. Absent actual knowledge to the contrary, we may assume the genuineness of any document or signature which appears to us to be genuine (whether or not original or photocopy and are under no obligation to verify the genuineness of any such document or signature). We shall have no obligations other than those specifically set forth herein. We shall have no liability to either the Purchaser or the Seller except for our willful misconduct or gross negligence. We shall establish the escrow account with Citibank, N.A. ("Citibank") and provided Citibank is the banking institution in which the escrow account is established, we shall in no event be liable or responsible for any failure of Citibank to pay such amount at our direction (unless such failure is caused by our willful misconduct or gross negligence).

4. We shall not be obligated to, but may, institute legal proceedings of any kind, including but not limited to a legal proceeding or action in a court of competent jurisdiction to determine our obligation hereunder or to seek permission to deposit such amount in court or the Office of the United States Trustee and be relieved of all further obligations hereunder. All fees and expenses reasonably incurred by us in our capacity as Escrow Agent in connection with any such action shall be borne, as between the Purchaser and Seller, on the one hand, and ourselves, on the other, equally by the Purchaser and Seller, but without prejudice to any right which either party may have to recover from the other.

5. The Purchaser and the Seller shall jointly and severally indemnify and hold us and our partners, employees, agents and advisors harmless from any damage, cost, liability or

expense (including, but not limited to, reasonable legal fees either paid to retained attorneys or representing the fair value of legal services rendered by us) which we may incur by reason of our acting hereunder, except for willful misconduct or gross negligence, and without prejudice to any right which either party may have to recover from the other party for any such damage, cost, liability or expense.

6. This escrow agreement shall be interpreted under the laws of the State of New York without regard to the conflict of laws rules thereof.

7. This escrow agreement may be executed in two or more counterparts, all of which taken together shall constitute one instrument.

8. This escrow agreement, including the other documents referred to herein which form a part hereof, contains the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This escrow agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

9. This escrow agreement may not be changed, and any of the terms, covenants, representations, warranties and conditions cannot be waived, except pursuant to an instrument in writing signed by each party hereto or, in the case of a waiver, by the party waiving compliance.

10. If any term, provision, agreement, covenant or restriction of this escrow agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, agreements, covenants and restrictions of this escrow agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such a determination, the parties shall negotiate in good faith to modify this escrow agreement so as to effect the original intent of the parties as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.

11. Each party hereto intends that this escrow agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the parties hereto.

12. The parties hereto have participated jointly in the negotiation and drafting of this escrow agreement. In the event any ambiguity or question of intent or interpretation arises, this escrow agreement shall be construed as if drafted jointly by all parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this escrow agreement.

13. Each of the parties hereto hereby waives, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any litigation as between the parties directly or indirectly arising out of, under or in connection with this escrow agreement or the transactions contemplated hereby or disputes relating hereto.

14. Notwithstanding anything to the contrary set forth in this escrow agreement, if the last day permitted for the giving of any notice or the performance of any act required or

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(2K)

permitted under this escrow agreement falls on a day which is not a Business Day, the time for the giving of such notice or the performance of such act will be extended to the immediately succeeding Business Day.

15. The failure of a party to insist upon strict adherence to any term of this escrow agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this escrow agreement. Any waiver must be in writing.

16. All rights and remedies of each of the parties under this escrow agreement will be cumulative, and the exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy available under this escrow agreement or applicable Law.

Please manifest your agreement to the terms hereof by signing and returning a copy of this letter.

* * *

Yours truly,

WALTER A. CASPULL, President

An authorized officer

AGREEMENT

GRAND TRUNK

By: 

General Manager
Grand Trunk

GREAT LAKES TRANSPORTATION

By: 
General Manager

By:

By:

By:

Yours truly,

WHITE & CASE LLP, as Escrow Agent

An authorized partner

AGREED TO:

GRAND TRUNK CORPORATION

By: _____

Name: _____

Title: _____

GREAT LAKES TRANSPORTATION LLC

By: Great Lakes Transportation Holdings L.P.,
its Managing Member

By: Blackstone Transportation Company
Inc., its General Partner

By: _____
Name: Robert L. Friedman
Title: Vice President

-7-

Schedule 1

Escrow Agent Wire Instructions

Citibank, N.A.

ABA Account #: 021-000-089

For the Account of: White & Case LLP Attorney Trust Account

Account No.: 4328-3661

EXHIBIT B

_____, 2004

Grand Trunk Corporation
c/o Canadian National Railway Company
935 de la Gauchetiere Street W.
Montreal, Quebec H3B 2M9

Re: Stock Purchase Agreement, dated as of October __, 2003 (the "Stock Purchase Agreement"), by and between Grand Trunk Corporation and Great Lakes Transportation LLC

Ladies and Gentlemen:

We have acted as special New York counsel to each of Great Lakes Transportation Holdings, L.P. ("Holdings"), Great Lakes Transportation LLC, a Delaware limited liability company (the "Seller"), the Companies, the Operating Subsidiaries, B&LE International, Inc., DMIR International, Inc., GLF Great Lakes Corp., GLF Credit Corp., GLT Management Company, Cuyahoga Dock, Inc. and P&CD International, Inc. in connection with (i) the Stock Purchase Agreement and (ii) the Holdings Side Letter. Unless otherwise defined herein, capitalized terms used herein shall have the meaning set forth in the Stock Purchase Agreement.

In connection with our opinions set forth below, we have examined executed originals or copies certified to our satisfaction of such agreements, documents, certificates and other statements of government officials, authorized representatives of the Seller and such other documents and papers as we have deemed necessary as a basis for such opinion. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. We have relied upon such certificates of public officials and such certificates of officers of the Seller and statements and information furnished by officers of the Seller with respect to the accuracy of factual matters contained therein which were not independently established by us. Specifically, we have assumed the accuracy and completeness of all corporate records and information made available to us by the Seller upon which we have relied.

On the basis of the foregoing, and in reliance thereon, and subject to the limitations, qualifications and exceptions set forth below, we are of the opinion that:

1. Based on our review of certificates of good standing issued by the Secretary of State of the State of Delaware, the Seller is a limited liability company validly existing and in good standing under the laws of the State of Delaware. Based on our review of certificates of good standing issued by the Secretary of State of the State of Delaware, each of the Companies, the Operating Subsidiaries, B&LE International, Inc., DMIR International, Inc., GLF Great Lakes Corp., GLF Credit Corp., GLT Management Company, Cuyahoga Dock, Inc. and P&CD International, Inc is a corporation validly existing and in good standing under the laws of the State of Delaware. Based on our review of a certificate of good standing issued by the Secretary of State of the State of Delaware, Holdings is a limited partnership validly existing and in good standing under the laws of the State of Delaware.

2. The Seller has all requisite limited liability company power and authority to execute and deliver the Stock Purchase Agreement and to perform its obligations thereunder. Holdings has all requisite limited partnership power and authority to execute the Holdings Side Letter and to perform its obligations thereunder.

3. The execution and delivery by the Seller of the Stock Purchase Agreement has been duly authorized by all necessary limited liability company action on the part of the Seller. The Seller has duly executed and delivered the Stock Purchase Agreement. The execution and delivery by Holdings of the Holdings Side Letter has been duly approved by the General Partner of Holdings. Holdings has duly executed and delivered the Holdings Side Letter.

4. The Stock Purchase Agreement constitutes a valid and binding obligation of the Seller enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws generally affecting creditors' rights and by equitable principles and applicable principles of public policy (regardless of whether enforcement is sought in equity or at law). The Holdings Side Letter constitutes a valid and binding obligation of Holdings enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws generally affecting creditors' rights and by equitable principles and applicable principles of public policy (regardless of whether enforcement is sought in equity or at law).

5. The execution, delivery and performance by the Seller of the Stock Purchase Agreement does not contravene (subject to obtaining the consents and approvals specified in Article VII of the Stock Purchase Agreement) any provision of (i) any New York State or Federal law, statute, rule or regulation applicable to the Seller which are normally applicable to a transaction of the type contemplated by the Stock Purchase Agreement or (ii) the Delaware Limited Liability Company Act (the "DLLCA"), or (iii) to our knowledge, any order, writ, injunction, judgment or decree of which we are aware of any New York State or Federal court applicable to the Seller or any of its respective properties. The execution, delivery and performance by Holdings of the Holdings Side Letter does not contravene any provision of (i) any New York State or Federal law, statute, rule or regulation applicable to Holdings which are normally applicable to a transaction of the type contemplated by the Holdings Side Letter or (ii) the Delaware Revised Uniform Limited Partnership Act (the "DRULPA"), or (iii) to our

knowledge, any order, writ, injunction, judgment or decree of which we are aware of any New York State or Federal court applicable to Holdings or any of its respective properties.

6. Neither the execution, delivery or performance by the Seller of the Stock Purchase Agreement nor compliance by the Seller with the terms and provisions thereof, will violate (i) any provision of the Certificate of Formation or the Limited Liability Company Agreement of the Seller or (ii) any provision of the certificate of incorporation or the by-laws of any of the Companies, the Operating Subsidiaries, B&LE International, Inc., DMIR International, Inc., GLF Great Lakes Corp., GLF Credit Corp., GLT Management Company, Cuyahoga Dock, Inc. and P&CD International, Inc. Neither the execution, delivery or performance by Holdings of the Holdings Side Letter nor compliance by Holdings with the terms and provisions thereof, will violate (i) any provision of the certificate of limited partnership of Holdings, as amended to date or (ii) any provision of the limited partnership agreement of Holdings, as amended to date.

[7. Based solely on our review of the books and records of the Companies, the Operating Subsidiaries, B&LE International, Inc., DMIR International, Inc., GLF Great Lakes Corp., GLF Credit Corp., GLT Management Company, Cuyahoga Dock, Inc. and P&CD International, Inc., each of which we have assumed to be complete, true and accurate in all respects, (i) each of the Companies, the Operating Subsidiaries, B&LE International, Inc., DMIR International, Inc., GLF Great Lakes Corp., GLF Credit Corp., GLT Management Company, Cuyahoga Dock, Inc. and P&CD International, Inc. has the capitalization set forth on Annex A attached hereto and (ii) all of the outstanding capital stock of each of the Companies, the Operating Subsidiaries, B&LE International, Inc., DMIR International, Inc., GLF Great Lakes Corp., GLF Credit Corp., GLT Management Company, Cuyahoga Dock, Inc. and P&CD International, Inc. have been duly authorized and validly issued and are owned, of record and beneficially, by the Person set forth opposite the name of each such entity on Annex A attached hereto.]¹

The opinions contained herein are subject to the following additional limitations, qualifications, exceptions and assumptions:

(a) We wish to point out that the law of the State of New York generally imposes an obligation of good faith and reasonableness in the performance and enforcement of contracts.

(b) We express no opinion with respect to Antitrust Laws (other than the federal Antitrust Laws of the United States and the ICC Termination Act),
or securities law
of the United States or any of its states.

(c) We call to your attention that Federal and state courts located in New York could decline to hear a case on grounds of forum non conveniens or any other doctrine limiting the availability of the courts in New York as a forum for the resolution of disputes not having sufficient nexus to New York and we express no opinion as to any

¹ This opinion may be given by in-house counsel to the Seller.

waiver of rights to assert the applicability of forum non conveniens doctrine or any such other doctrine.

(d) We have assumed for the purposes of our opinions expressed above (without independently verifying) that the Purchaser has the corporate power and authority to enter into and perform the Stock Purchase Agreement and the Holdings Side Letter and that each of the Stock Purchase Agreement and the Holdings Side Letter has been duly authorized, executed and delivered by the Purchaser.

The opinions expressed above are limited to questions arising under the Federal law of the United States, the law of the State of New York, the General Corporation Law of the State of Delaware, the DLLCA and the DRULPA. This opinion does not cover the law of any jurisdiction other than that specified in the immediately preceding sentence (collectively, the "Other Jurisdictions"), nor did we review codifications of the laws of Other Jurisdictions. Furthermore, we express no opinion as to, and assume no responsibility for, the effect of any fact or circumstance occurring subsequent to the date of this letter, including, without limitation, legislative and other changes in the law or changes in circumstances affecting the Seller or Holdings. We assume no responsibility to advise you of any such facts or circumstances of which we become aware, regardless of whether or not they affect the opinions herein.

This opinion is rendered only to you and is solely for your benefit in connection with the above transaction. This opinion may not be used or relied upon by you for any other purpose, or published, communicated, quoted to, used by or relied upon by any other person or entity for any

purpose whatsoever without our prior written consent.

Very truly yours,

White & Case LLP

SWA:GLP:ADS:DJK:ENZ

EXHIBIT D

FORM OF OPINION OF PURCHASER'S OUTSIDE COUNSEL

_____, 2004

Great Lakes Transportation LLC
P.O. Box 68
135 Jamison Lane
Monroeville, PA 15146

Re: Stock Purchase Agreement, dated as of October ___, 2003 ("Stock Purchase Agreement"), by and between Grand Trunk Corporation and Great Lakes Transportation LLC

Ladies and Gentlemen:

We have acted as special transactional counsel to Grand Trunk Corporation, a Delaware corporation (the "Company"), in connection with the preparation, execution and delivery of the Stock Purchase Agreement and the Purchaser Side Letter. This opinion is rendered to the Seller pursuant to the Stock Purchase Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them as capitalized terms in the Stock Purchase Agreement. The Stock Purchase Agreement and the Purchaser Side Letter are sometimes collectively referred to in this letter as the "Transaction Documents."

In connection with rendering this opinion, we have examined the Company's Articles of Incorporation as in effect on the date hereof (the "Company Articles"), the Company's By-laws as in effect on the date hereof (the "Company By-laws") and relevant resolutions of the Board of Directors of the Company. In addition, we have examined such other agreements, documents, corporate and other records of the Company and certificates of public officials, officers or representatives of the Company and others, as we have deemed necessary or appropriate as a basis for the opinions set forth below.

As used in this opinion, the expressions "known to us" and "to our knowledge" mean the actual knowledge of the attorneys in this firm who have rendered legal services in connection with this transaction. We have not made any independent investigation to determine the accuracy of any statements made subject to such expressions, except as expressly described herein. No inference as to our knowledge of any matters bearing on the accuracy of such statement should be drawn from the fact of our representation of the Company (or of any affiliate of the Company) in any matters other than this transaction.

Subject to the foregoing and the limitations set forth below, we are of the opinion that:

1. The Company is a corporation validly existing and in good standing under the laws of the State of Delaware.

2. The Company has all requisite corporate power and authority to execute and deliver, and to perform its obligations under the terms of, the Transaction Documents. The Transaction Documents are valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

3. The execution and delivery by the Company of the Transaction Documents have been duly authorized by all necessary corporate action on the part of the Company. The Company has duly executed and delivered the Transaction Documents.

4. The execution, delivery and performance by the Company of the Transaction Documents, and the consummation of the transactions contemplated thereby, do not violate any provision of the Company Articles or the Company Bylaws, and do not violate or contravene (subject to obtaining the consents and approvals specified in Article VI of the Stock Purchase Agreement) (i) any governmental statute, rule or regulation applicable to the Company which are normally applicable to transactions of the type contemplated by the Transaction Documents, (ii) the General Corporation Law of the State of Delaware ("DGCL"), or (iii) to our knowledge, any order, writ, injunction, judgment or decree that is applicable to the Company or any of its respective properties.

With your permission, we have made the foregoing opinions subject to the following limitations, qualifications, exceptions and assumptions:

- (i) Our opinions in paragraph 1 are based solely on relevant certificates issued by the Secretary of State of the State of Delaware.
- (ii) Our opinions stated in paragraph 2 with respect to the validity and enforceability of the Transaction Documents are subject to:
 - (a) the effect of bankruptcy, insolvency, reorganization, rehabilitation, moratorium, fraudulent transfer or other laws now or hereafter in effect relating to or affecting the rights and remedies of creditors' generally; and

- (b) general principles of equity, whether such enforcement is considered in a proceeding in equity or at law, and by the discretion of the court before which any proceeding therefor may be brought, and in this regard, we have assumed that you will exercise your rights and remedies under the Transaction Documents in good faith and in circumstances and a manner that are commercially reasonable.
- (iii) With respect to our examination of all documents and agreements in connection with our opinions expressed in this letter, we have assumed the genuineness of all signatures (except signatures of representatives of the Company), the authenticity of all documents submitted to us as originals and the conformity with originals of all documents submitted to us as copies and the legal capacity of each individual signing a document. We have also assumed the power and authority of each party to the Transaction Documents, except the Company, to execute, deliver and perform the Transaction Documents to which they are parties, that the Transaction Documents have been duly authorized, executed and delivered by such parties, and that the Transaction Documents constitute the legal, valid and binding obligations of such parties, enforceable against them in accordance with their terms.
- (iv) We have relied, as to certain pertinent factual matters concerning the Company and its business and properties, solely upon statements contained in a certificate of the executive officers of the Company and factual representations of the Company as set forth in the Stock Purchase Agreement. Although we have made no independent investigation or verification of the factual matters set forth in such certificate and in the Stock Purchase Agreement, nothing has come to our attention indicating that such reliance by us or by you is not justified.
- (v) We are members of the Bar of the State of Illinois. The opinions expressed above are limited to the laws of the State of Illinois, the DGCL, and the Federal laws of the United States of America, to the extent such laws are applicable to the transactions or the documents referred to herein. We note that the Transaction Documents state that they are to be governed by the laws of the State of New York. We have assumed, with your permission,

for purposes of rendering the opinions herein expressed, that the laws of the State of New York relevant to the enforceability of the Transaction Documents are identical to the laws of the State of Illinois. We express no opinion with respect to the securities laws of the United States or any of its states. We express no opinion with respect to the Antitrust Laws, the ICC Termination Act, or any maritime laws, including the rules and regulations of the MarAd and Coast Guard.

- (vi) This opinion is given as of the date set forth above and we assume no obligation to update or supplement this opinion to reflect any facts or circumstances which may hereafter come to our attention or any changes in law which may hereafter occur.
- (vii) We express no opinion as to any waiver of rights to assert the applicability of the doctrine of *forum non conveniens* or any other doctrine limiting the availability of any court as a forum for the resolution of disputes not having a sufficient nexus.

This opinion is being furnished to you solely for your benefit in connection with the transactions contemplated by the Transaction Documents and shall not be relied upon by any other person or for any other purpose without our prior written consent. Except for reproductions for inclusions in the transcripts of the documentation relating to the Transaction Documents, this opinion may not be copied or otherwise reproduced or quoted from or in any other way made public, in whole or in part, without our prior written consent. We expressly disclaim any obligation to advise you of any future events that may affect, change or alter these opinions.

Respectfully submitted,

FREEBORN & PETERS, LLP

569696

EXHIBIT E

PRIVATE AND CONFIDENTIAL

_____, 2004

Blackstone Transportation Company, Inc.
Great Lakes Transportation Holdings L.P.
c/o Blackstone Transportation Company, Inc.
345 Park Avenue, 31st Floor
New York, NY 10154

re: Great Lakes Transportation, LLC

Ladies & Gentlemen:

Reference is made to that certain Stock Purchase Agreement, dated October __, 2003 (the "Agreement"), by and between Grand Trunk Corporation ("Purchaser") and Great Lakes Transportation LLC. Defined terms used herein and not otherwise defined herein shall have the meaning set forth in the Agreement.

By executing this letter agreement, Purchaser agrees, and shall cause its Affiliates (including the Companies, the Operating Companies and their respective Subsidiaries after the Closing), to (i) treat the Split-off as a tax-free distribution pursuant to Section 355 of the Code and (ii) treat the Internal Loans as indebtedness for all Tax and financial reporting purposes.

Each party hereto intends that this letter agreement shall benefit any Person who directly or indirectly, though one or more legal entities, is a beneficial holder of an interest in Great Lakes Transportation Holdings L.P. (the "Beneficiaries"). Each of Blackstone Transportation Company, Inc. and Great Lakes Transportation Holdings L.P. shall be entitled to enforce the terms of this letter agreement on behalf of, and for the benefit of, each of the Beneficiaries.

The Purchaser shall indemnify each of Blackstone Transportation Company, Inc., Great Lakes Transportation Holdings L.P. and each of the Beneficiaries against any U.S. federal income taxes or state or local income, or franchise taxes for which any of the Beneficiaries become liable as a result of a breach of the covenants contained in this letter agreement by Grand Trunk Corporation.

The covenants contained in this letter agreement shall terminate on the thirtieth day following expiration of the applicable statute of limitations with respect to the subject matter contained herein.

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This letter shall not be amended or modified except in a writing signed by the parties hereto. This letter shall be governed by, and construed in accordance with, the laws of the State of New York, applicable to agreements made and to be performed within such State.

This letter may be executed in one or more counterparts, each of which shall be an original, but all such counterparts shall together constitute but one and the same instrument.

If the foregoing correctly sets forth our mutual understanding with respect to the proposed transaction please so indicate by signing the enclosed copy of this letter, and returning it to us.

GRAND TRUNK CORPORATION

By: _____
Name:
Title:

Accepted and Agreed as of this ___ day of
___ 2004.

BLACKSTONE TRANSPORTATION COMPANY INC.

By _____
Name:
Title:

GREAT LAKES TRANSPORTATION HOLDINGS, L.P.

By _____
Name:
Title:

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34424 (Sub-No. 1)

DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY
-- TRACKAGE RIGHTS --
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, PQ H3B 2M9
(514) 399-5430

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500, North Building
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 347-7840

Paul A. Cunningham
Richard B. Herzog
Gerald P. Norton
James M. Guinivan
HARKINS CUNNINGHAM LLP
801 Pennsylvania Avenue, N.W., Suite 600
Washington, DC 20004-2664
(202) 973-7600

Counsel for Duluth, Winnipeg and Pacific Railway Company

November 5, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34424 (Sub-No. 1)

DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY
-- TRACKAGE RIGHTS --
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

Correspondence with respect to this notice may be addressed to the following
counsel for Duluth, Winnipeg and Pacific Railway Company ("DWP"):

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Paul A. Cunningham
Harkins Cunningham LLP
801 Pennsylvania Avenue, N.W., Suite 600
Washington, D.C. 20004
(202) 973-7600

In accordance with 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), DWP hereby files
this verified notice of exemption relating to trackage rights to be granted to DWP (a subsidiary of
Canadian National Railway Company ("CN")) by Duluth, Missabe and Iron Range Railway
Company ("DMIR") over DMIR's lines between Shelton Junction and Nopeming Junction, MN.
Simultaneously with this grant of trackage rights, DWP intends to grant trackage rights to DMIR
over DWP's parallel line between Shelton Junction and Nopeming Junction. This reciprocal grant

of trackage rights is intended to take effect at the time (“CN”) and Grand Trunk Corporation (“GTC”) acquire control of DMIR pursuant to the application filed by CN and GTC in STB Finance Docket No. 34424. Together, this reciprocal grant of trackage rights will give CN maximum operational flexibility in its use of the two parallel lines, including making it possible for CN to provide “directional running” for trains moving between the Virginia and Duluth areas in Minnesota. Thus, if the lines were operated directionally, northbound DMIR trains and crews would be able to operate over DWP’s line, while southbound DWP trains and crews would be able to operate over DMIR’s line.

As required by 49 C.F.R. § 1180.4(g), the following information is provided:

SUMMARY OF TRANSACTION
[§ 1180.6(a)(1)(i)]

Under the proposed transaction, DMIR will grant DWP trackage rights over DMIR’s line between Shelton Junction and Nopeming Junction, MN.

The business address of DWP is:

Duluth, Winnipeg and Pacific Railway Company
935 de La Gauchetière Street West
Montréal, PQ H3B 2M9
(514) 399-5430

DMIR’s business address is:

Duluth, Missabe and Iron Range Railway Company
135 Jamison Lane
Monroeville, PA 15146-2330
telephone (412) 829-6892

Questions regarding the transaction may be addressed to the counsel listed at the beginning of this notice.

PROPOSED TIME SCHEDULE
[§ 1180.6(a)(1)(ii)]

CN intends that the trackage rights that are the subject of this notice to be granted pursuant to the Trackage Rights Agreement attached hereto as Exhibit 2. That Agreement has not yet been executed, but CN intends to have it executed by representatives of DWP and DMIR promptly upon CN's acquisition of control of DMIR, pursuant to an order of the Board approving the Application in STB Finance Docket No. 34424. Under the draft Agreement, the trackage rights which are the subject of this notice shall be effective upon CN's acquisition of control of DMIR.

PURPOSE OF THE TRANSACTION
[§ 1180.6(a)(3)]

The purpose of the trackage rights that are the subject of this notice is to give CN maximum flexibility in operating the two parallel lines between Shelton Junction and Nopeming Junction that it would own upon consummation of the control of DMIR that is proposed in the Application in STB Finance Docket No. 34424.

LIST OF STATES
[§ 1180.6(a)(5)]

The following are the states in which any part of the property of each applicant carrier is situated:

<u>DWP</u> :	Minnesota and Wisconsin
<u>DMIR</u> :	Minnesota and Wisconsin

MAP
[§ 1180.6(a)(6)]

Attached as Exhibit 1 hereto is a railroad map of the area served by DMIR, showing the lines of DMIR and DWP in their true relations to one another, short line connections, other rail lines in the territory, and the principal geographic points in the regions traversed.

AGREEMENT
[§ 1180.6(a)(7)(ii)]

The draft Trackage Rights Agreement is attached hereto as Exhibit 2. CN expects to cause this Agreement to be executed promptly after the acquisition of DMIR by CN and GTC, pursuant to a Board order approving the Application in STB Finance Docket No. 34424.

LEVEL OF LABOR PROTECTION
[§ 1180.4(g)(1)(i)]

Norfolk & Western labor protective conditions¹ are applicable to the trackage rights which are the subject of this notice.

CAPTION SUMMARY
[§ 1180.4(g)(2)(i)]

In accordance with the Board's rules, a proposed caption summary is submitted as Exhibit 3 hereto.

¹See *Norfolk & W. Ry. -- Trackage Rights -- Burlington N. Inc.*, 354 I.C.C. 605 (1978), modified sub nom. *Mendocino Coast Ry. -- Lease & Oper. -- California W. R.R.*, 360 I.C.C. 653 (1980).

Respectfully submitted,

Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, PQ H3B 2M9
(514) 399-5430

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840



Paul A. Cunningham
Richard B. Herzog
Gerald P. Norton
James M. Guinivan
HARKINS CUNNINGHAM LLP
801 Pennsylvania Avenue, N.W, Suite 600
Washington, DC 20004
(202) 973-7600

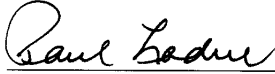
*Counsel for Duluth, Winnipeg and Pacific
Railway Company*

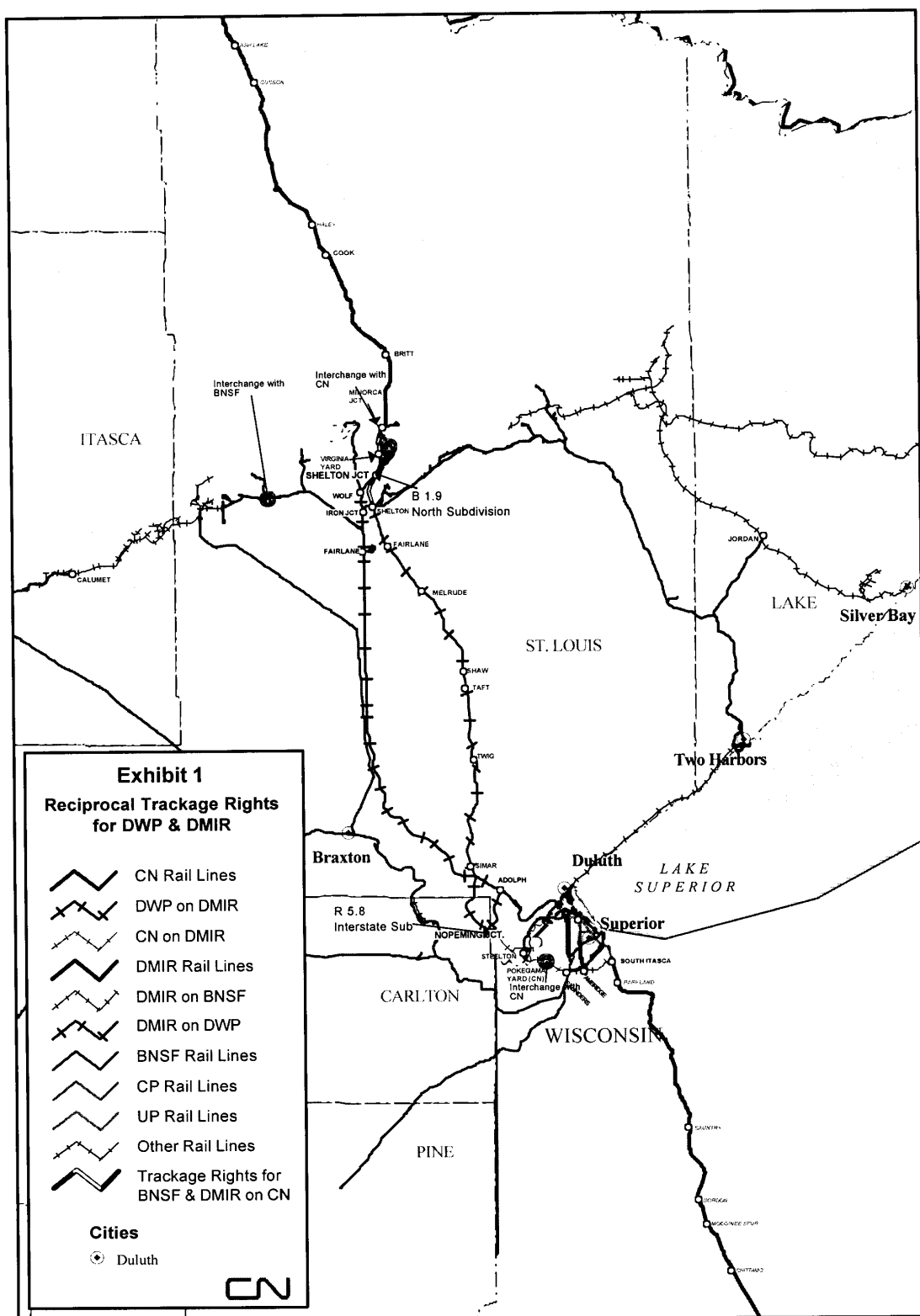
November 5, 2003

VERIFICATION

I, Paul Ladue, verify under penalty of perjury under the laws of the United States that information contained in the foregoing Notice of Exemption is true and correct. Further, I certify that I am qualified and authorized to provide this verification on behalf of Duluth, Winnipeg and Pacific Railway Company.

Executed on November 1, 2003


Paul Ladue



COLOR FIGURE 4

EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT

Agreement No. _____

between

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

("DMIR" or "Owner")

And

DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY

("DWP" or "User")

Relating to DWP's Limited Trackage Rights Over

DMIR 's Lines Of Railroad Between

Nopeming Jct. and DWP Junction

AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____ 2003, by and between **DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY** (hereinafter referred to as "DMIR" or "OWNER") and **DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY**, (hereinafter referred to as "DWP" or "USER").

WHEREAS, DMIR owns and operates a segment of railroad located between Nopeming Jct. and Shelton Jct., all in the State of Minnesota; and

WHEREAS, DWP has requested trackage rights over DMIR's lines of railroad between Nopeming Jct. and Shelton Jct; and

WHEREAS, DMIR agrees to grant DWP limited overhead trackage rights for the sole movement of specific traffic between Nopeming Jct. and Shelton Jct. subject to the terms and conditions set forth herein:

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1.0

GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- That portion of DM&IR 's Virginia Branch between Point "A" at Milepost B2.71, including an additional 616 feet of connecting track and Point "E", known as Nopeming Junction, at Milepost R5.77 on the Interstate Sub-Division, said tracks shown in red with Points "A" and "E" designated on the attachment marked Exhibit "A" attached to and made a part of this Agreement, (2) all sidings now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (3) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto, a distance of approximately 63.82 miles, all in the State of Minnesota.

SECTION 2.0

USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

SECTION 4.0 COMPENSATION

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be _____cents (\$. __) per car mile (hereinafter referred to as the "Base Charge")

4.2 Thereafter, User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of cars (loaded or empty), locomotive and caboose units moved by User with its own crews and power over the Joint Trackage by (iii) the miles of Joint Trackage used. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.

4.3 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.4 User will furnish to Owner, in care of Manager Contract Compliance, or their designates, at the end of each month, a statement of the number of loaded and empty cars operated over the Joint Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Joint Trackage.

4.5 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

- (i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective July 1 of each year, beginning July 1, _____ to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as

reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

(ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (2001) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (2002); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

$$B/A \times C = \text{Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)}$$

(iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.
- (iii) Upon termination of this Agreement, Owner may at its option remove portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User

or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

SECTION 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request

SECTION 9.0 MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Proctor, MN or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under

such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner will schedule the investigation and notify User's Local Transportation Officer in the territory thereof, who will, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Such investigation or hearing may be attended by any official designated by User, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to User's employee or employees required to attend such hearings. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost. After the investigation is concluded, Owner will promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer will arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.

9.8 If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions issued by Owner's Timetable or otherwise. User shall release,

indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.9 In a major offense such as violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.11 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

9.12 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

9.13 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.14 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

10.1 All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 11.0 CLEARING OF WRECKS

11.1 Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 12.0 LIABILITY

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both DMIR and DWP, then: (i) each of DMIR and DWP is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) DWP and DMIR are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both DWP and any other third party user of the Subject trackage not a party to this Agreement, then DWP's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered DMIR for the purpose of determining DWP's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its

subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

- (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (f) For purposes of determining liability, pilots furnished by DMIR to DWP pursuant to this Agreement shall be considered as the employees of DWP while such employees are on board or getting on or off trains of DWP.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice

thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

SECTION 15.0 ARBITRATION

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 16.0 REGULATORY APPROVAL

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

16.2 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 17.0 ABANDONMENT OF SUBJECT TRACKAGE

17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or

subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 18.0 GENERAL PROVISIONS

18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either DMIR or DWP to any party other than DMIR's and DWP's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement.

SECTION 20.0 NOTICE

20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If to Owner:

Contracts and Administration
Canadian National Railway Company
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 21.0 COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage (which date is referred to herein as the "Commencement Date"). The Commencement Date shall not be prior to the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

21.2 This Agreement shall continue in full force and effect for a period of _____ years from the Commencement Date, and shall continue in full force and effect for additional _____ year terms,

provided, however, that DWP shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the Owner.

21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the Surface Transportation Board (STB) or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

**DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY**

By: _____

Its: _____

Date: _____

WITNESS

**DULUTH, WINNIPEG AND PACIFIC
RAILWAY COMPANY**

By: _____

Its: _____

Date: _____

[EXHIBIT A]

[To be provided later]

Exhibit 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 34424 (Sub-No. 1)

DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY
-- TRACKAGE RIGHTS --
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

Duluth, Missabe and Iron Range Railway Company (DMIR) has agreed to grant Duluth, Winnipeg and Pacific Railway Company (DWP) trackage rights between Shelton Junction and Nopeming Junction, MN. Under the terms of the agreement between DMIR and DWP, DWP has the right to operate its trains, locomotives, cars, and equipment with its own crews over DMIR between DMIR's Nopeming Jct., Mileage R 5.77 on DMIR's Spirit Lake Branch, and DMIR's Shelton Jct., Mileage B 2.71, on DMIR's Virginia Branch, a distance of approximately 64 miles, all in the State of Minnesota.

The trackage rights will be effective upon the acquisition by Canadian National Railway Company and Grand Trunk Corporation of control of DMIR, for which authority has been sought in Finance Docket No. 34424.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: _____, 2004

By the Board, Vernon A. Williams, Secretary.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34424 (Sub-No. 2)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
-- TRACKAGE RIGHTS --
DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, PQ H3B 2M9
(514) 399-5430

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500, North Building
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 347-7840

Paul A. Cunningham
Richard B. Herzog
Gerald P. Norton
James M. Guinivan
HARKINS CUNNINGHAM LLP
801 Pennsylvania Avenue, N.W., Suite 600
Washington, DC 20004-2664
(202) 973-7600

Counsel for Canadian National Railway Company

November 5, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34424 (Sub-No. 2)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
-- TRACKAGE RIGHTS --
DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

Correspondence with respect to this notice may be addressed to the following
counsel for Canadian National Railway Company ("CN"):

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Paul A. Cunningham
Harkins Cunningham LLP
801 Pennsylvania Avenue, N.W., Suite 600
Washington, D.C. 20004
(202) 973-7600

In accordance with 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), CN hereby files this
verified notice of exemption relating to trackage rights to be granted to Duluth, Missabe and Iron
Range Railway Company ("DMIR") by CN's subsidiary, Duluth, Winnipeg and Pacific Railway
Company ("DWP") over DWP's lines between Shelton Junction and Nopeming Junction, MN.
CN intends that, simultaneously with this grant of trackage rights, DMIR will grant trackage

rights to DWP over DMIR's parallel line between Shelton Junction and Nopeming Junction.

This reciprocal grant of trackage rights is intended to take effect at the time CN and Grand Trunk Corporation ("GTC") acquire control of DMIR pursuant to the application filed by CN and GTC in STB Finance Docket No. 34424. Together, this reciprocal grant of trackage rights will give CN maximum operational flexibility in its use of the two parallel lines, including making it possible for CN to provide "directional running" for trains moving between the Virginia and Duluth areas in Minnesota. Thus, if the lines were operated directionally, northbound DMIR trains and crews would be able to operate over DWP's line, while southbound DWP trains and crews would be able to operate over DMIR's line.

As required by 49 C.F.R. § 1180.4(g), the following information is provided:

SUMMARY OF TRANSACTION
[§ 1180.6(a)(1)(i)]

Under the proposed transaction, DWP will grant DMIR trackage rights over DWP's line between Shelton Junction and Nopeming Junction, MN.

The business address of DWP is:

Duluth, Winnipeg and Pacific Railway Company
935 de La Gauchetière Street West
Montréal, PQ H3B 2M9
(514) 399-5430

DMIR's business address is:

Duluth, Missabe and Iron Range Railway Company
135 Jamison Lane
Monroeville, PA 15146-2330
telephone (412) 829-6892

Questions regarding the transaction may be addressed to the counsel listed at the beginning of this notice.

PROPOSED TIME SCHEDULE
[§ 1180.6(a)(1)(ii)]

The trackage rights which are the subject of this notice will be granted pursuant to the Agreement attached hereto as Exhibit 2. That Agreement has not yet been executed, but CN intends to have it executed by representatives of DWP and DMIR promptly upon CN's acquisition of control of DMIR, pursuant to an order of the Board approving the Application in STB Finance Docket No. 34424. Under the draft Agreement, the trackage rights that are the subject of this notice shall be effective upon CN's acquisition of control of DMIR.

PURPOSE OF THE TRANSACTION
[§ 1180.6(a)(3)]

The purpose of the trackage rights that are the subject of this notice is to give CN maximum flexibility in operating the two parallel lines between Shelton Junction and Nopeming Junction that it would own upon consummation of the control of DMIR that is proposed in the Application in STB Finance Docket No. 34424.

LIST OF STATES
[§ 1180.6(a)(5)]

The following are the states in which any part of the property of each applicant carrier is situated:

DWP: Minnesota and Wisconsin

DMIR: Minnesota and Wisconsin

MAP
[§ 1180.6(a)(6)]

Attached as Exhibit 1 hereto is a railroad map of the area served by DMIR and DWP, showing the lines of DMIR and DWP in their true relations to one another, short line connections, other rail lines in the territory, and the principal geographic points in the regions traversed.

AGREEMENT
[§ 1180.6(a)(7)(ii)]

The draft Trackage Rights Agreement is attached hereto as Exhibit 2. CN expects to cause this Agreement to be executed promptly after the acquisition of DMIR by CN and GTC, pursuant to a Board order approving the Application in STB Finance Docket No. 34424.

LEVEL OF LABOR PROTECTION
[§ 1180.4(g)(1)(i)]

Norfolk & Western labor protective conditions¹ are applicable to the trackage rights which are the subject of this notice.

CAPTION SUMMARY
[§ 1180.4(g)(2)(i)]

In accordance with the Board's rules, a proposed caption summary is submitted as Exhibit 3 hereto.

¹See *Norfolk & W. Ry. -- Trackage Rights -- Burlington N. Inc.*, 354 I.C.C. 605 (1978), modified sub nom. *Mendocino Coast Ry. -- Lease & Oper. -- California W. R.R.*, 360 I.C.C. 653 (1980).

Respectfully submitted,

Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, PQ H3B 2M9
(514) 399-5430

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840



Paul A. Cunningham
HARKINS CUNNINGHAM LLP
801 Pennsylvania Avenue, N.W, Suite 600
Washington, DC 20004
(202) 973-7600

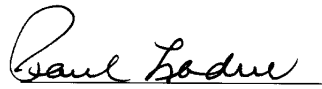
*Counsel for Canadian National Railway
Company*

November 5, 2003

VERIFICATION

I, Paul Ladue, verify under penalty of perjury under the laws of the United States that information contained in the foregoing Notice of Exemption is true and correct. Further, I certify that I am qualified and authorized to provide this verification on behalf of Canadian National Railway Company.

Executed on November 1, 2003


Paul Ladue

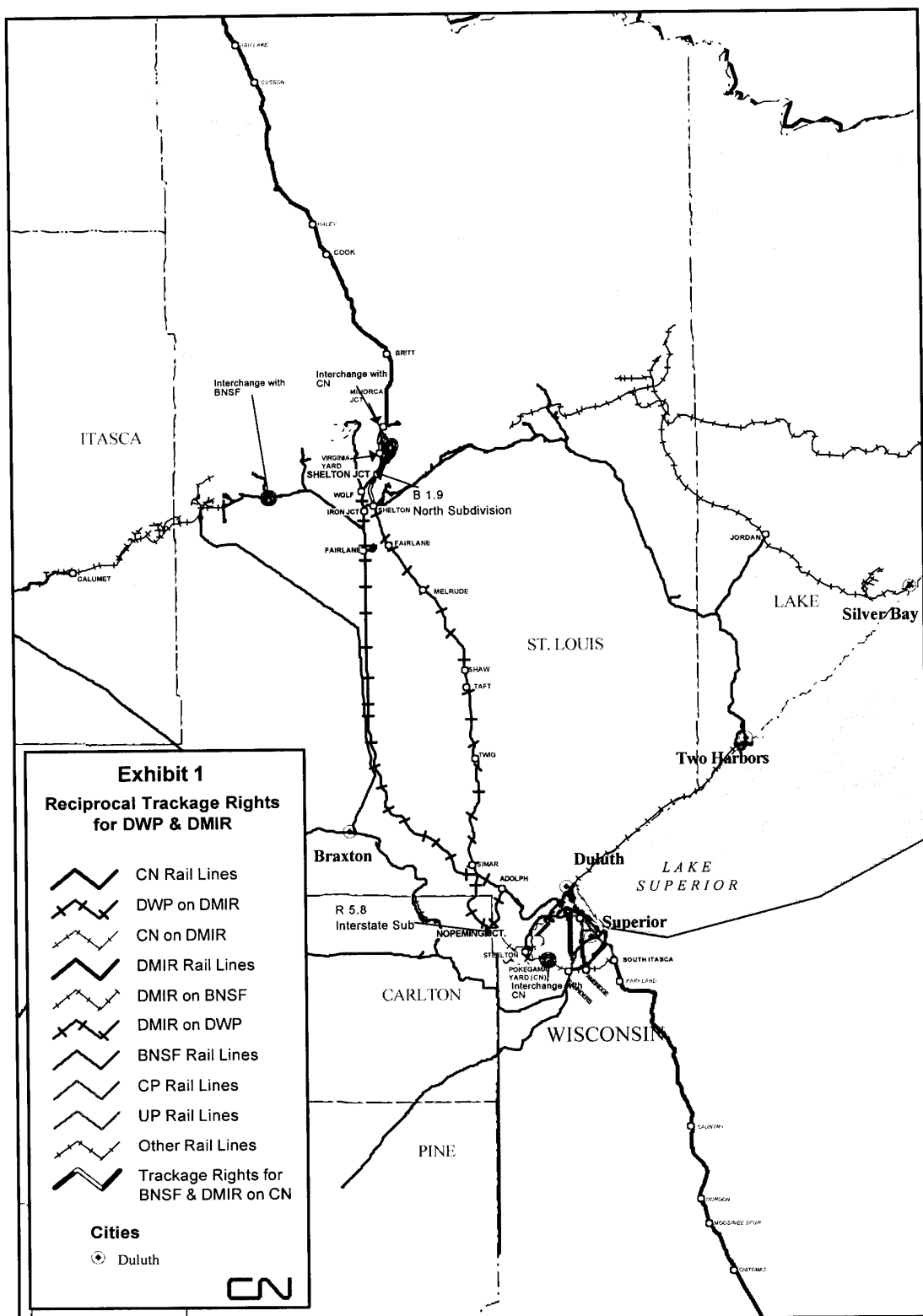


EXHIBIT 2

TRackage RIGHTS AGREEMENT

Agreement No. _____

between

DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY

("DWP" or "Owner")

And

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

("DMIR" or "User")

Relating to DMIR's Limited Trackage Rights Over

DWP 's Lines Of Railroad Between

Nopeming Jct. and Shelton Jct.

AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____ 2003, by and between **DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY** (hereinafter referred to as "**DWP**" or "**OWNER**") and **DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**, (hereinafter referred to as "**DMIR**" or "**USER**").

WHEREAS, DWP owns and operates a segment of railroad located between Nopeming Jct. and Shelton Jct., all in the State of Minnesota; and

WHEREAS, DMIR has requested trackage rights over DWP's lines of railroad between Nopeming Jct. and Shelton Jct; and

WHEREAS, DWP agrees to grant DMIR limited overhead trackage rights for the sole movement of specific traffic between Nopeming Jct. and Shelton Jct. subject to the terms and conditions set forth herein:

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1.0 GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- Between the DWP's Nopeming Jct., Mileage 10.7 and DWP's Shelton Jct., Mileage 70.7, all on DWP's Rainy Subdivision, a distance of approximately 60 miles, all in the State of Minnesota.

SECTION 2.0 USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

SECTION 4.0 COMPENSATION

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be _____cents (\$. __) per car mile (hereinafter referred to as the "Base Charge")

4.2 Thereafter, User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of cars (loaded or empty), locomotive and caboose units moved by User with its own crews and power over the Joint Trackage by (iii) the miles of Joint Trackage used. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.

4.3 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.4 User will furnish to Owner, in care of Manager Contract Compliance, or their designates, at the end of each month, a statement of the number of loaded and empty cars operated over the Joint Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Joint Trackage.

4.5 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

(i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective July 1 of each year, beginning July 1, _____ to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final

"Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

(ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (2001) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (2002); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

$$B/A \times C = \text{Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)}$$

(iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.
- (iii) Upon termination of this Agreement, Owner may at its option remove portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

SECTION 8.0

ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request

SECTION 9.0

MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Superior, WI or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner will schedule the investigation and notify User's Local Transportation Officer in the territory thereof, who will, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Such investigation or hearing may be attended by any official designated by User, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to User's employee or employees required to attend such hearings. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost. After the investigation is concluded, Owner will promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer will arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.

9.8 If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions issued by Owner's Timetable or otherwise. User shall release, indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.9 In a major offense such as violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.11 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

9.12 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

9.13 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.14 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

10.1 All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 11.0

CLEARING OF WRECKS

11.1 Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 12.0

LIABILITY

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both DWP and DMIR, then: (i) each of DWP and DMIR is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) DMIR and DWP are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both DMIR and any other third party user of the Subject trackage not a party to this Agreement, then DMIR's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered DWP for the purpose of determining DMIR's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

- (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (f) For purposes of determining liability, pilots furnished by DWP to DMIR pursuant to this Agreement shall be considered as the employees of DMIR while such employees are on board or getting on or off trains of DMIR.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0

INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0

DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

SECTION 15.0 ARBITRATION

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 16.0 REGULATORY APPROVAL

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

16.2 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 17.0 ABANDONMENT OF SUBJECT TRACKAGE

17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's

operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 18.0 GENERAL PROVISIONS

18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either DWP or DMIR to any party other than DWP's and DMIR's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement.

SECTION 20.0 NOTICE

20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If to Owner:

Contracts and Administration
Canadian National Railway Company
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 21.0 COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage (which date is referred to herein as the "Commencement Date"). The Commencement Date shall not be prior to the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

21.2 This Agreement shall continue in full force and effect for a period of _____ years from the Commencement Date, and shall continue in full force and effect for additional _____ year terms, provided, however, that DMIR shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the Owner.

21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the Surface Transportation Board (STB) or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

**DULUTH, WINNIPEG AND PACIFIC
RAILWAY COMPANY**

By: _____

Its: _____

Date: _____

WITNESS

**DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY**

By: _____

Its: _____

Date: _____

[EXHIBIT A]

[To be provided later]

Exhibit 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 34424 (Sub-No. 2)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
-- TRACKAGE RIGHTS --
DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY

Duluth, Winnipeg and Pacific Railway Company (DWP) has agreed to grant Duluth, Missabe and Iron Range Railway Company (DMIR) trackage rights between Shelton Junction and Nopeming Junction, MN. Under the terms of the agreement between DWP and DMIR, DMIR has the right to operate its trains, locomotives, cars, and equipment with its own crews over DWP between Nopeming Junction, Milepost 10.7 on DWP's Rainy Subdivision, and Shelton Junction, milepost 70.7 on DWP's Rainy Subdivision, a distance of approximately 60 miles, all in the State of Minnesota.

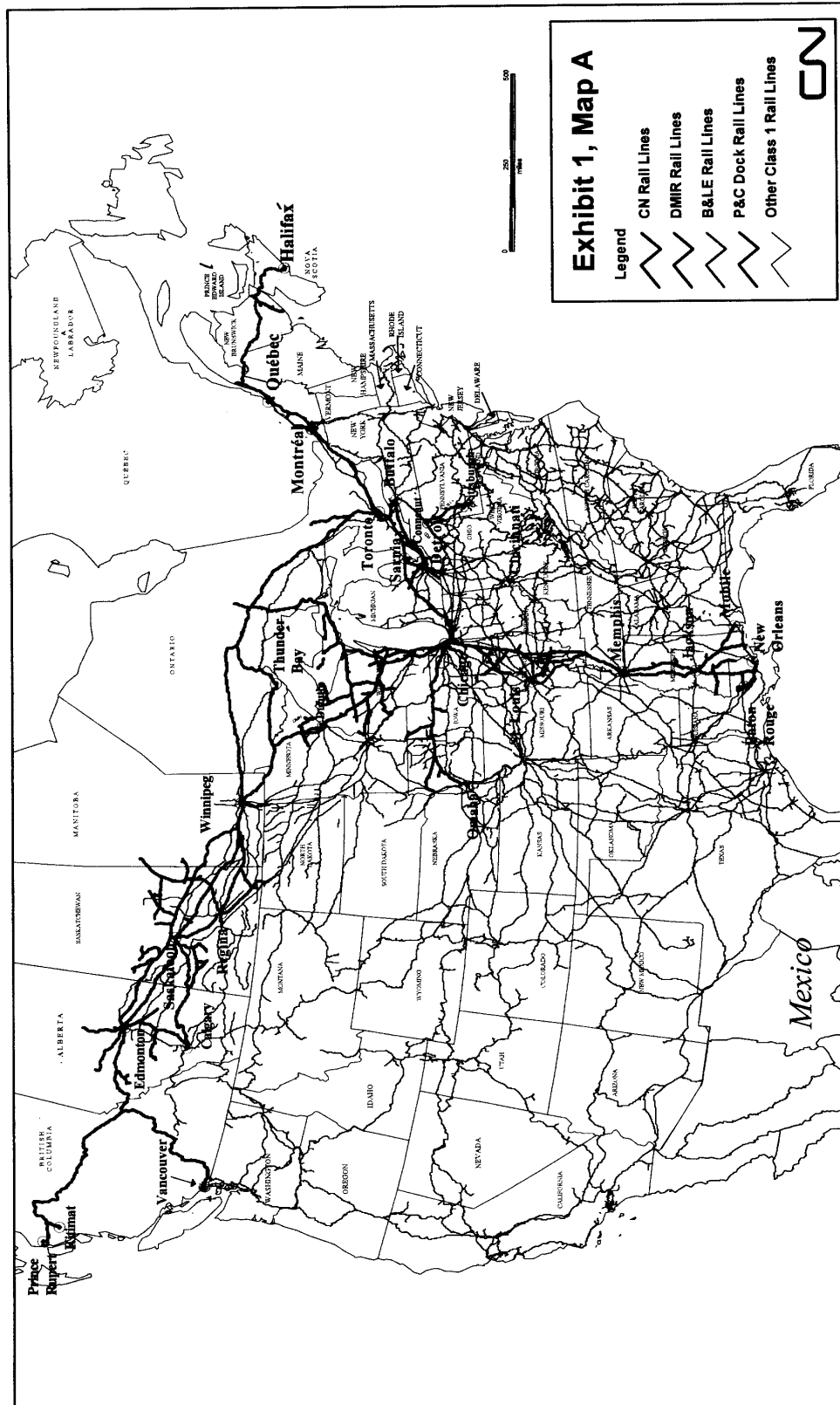
The trackage rights will be effective upon the acquisition by Canadian National Railway Company and Grand Trunk Corporation of control of DMIR, for which authority has been sought in Finance Docket No. 34424.

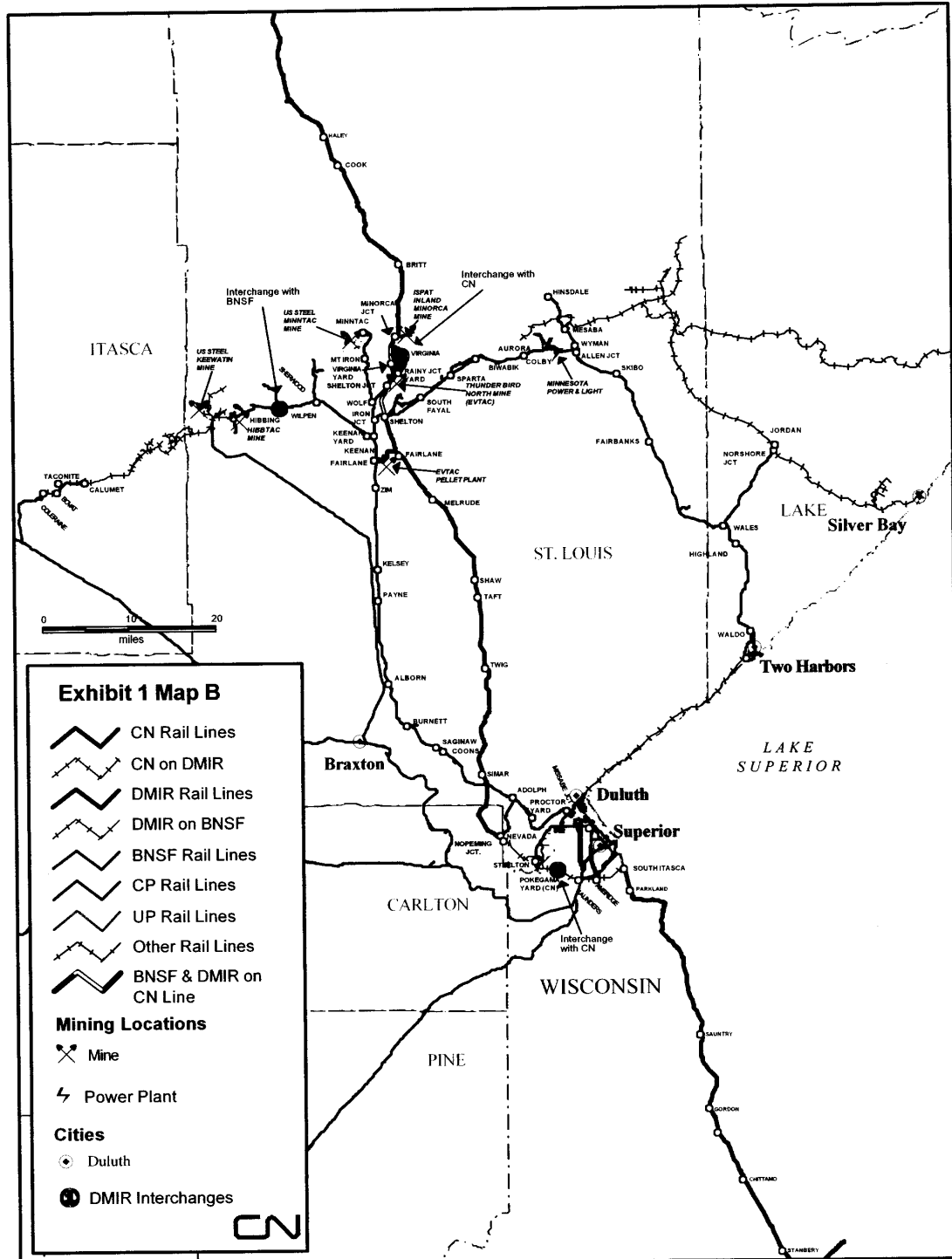
This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: _____, 2004

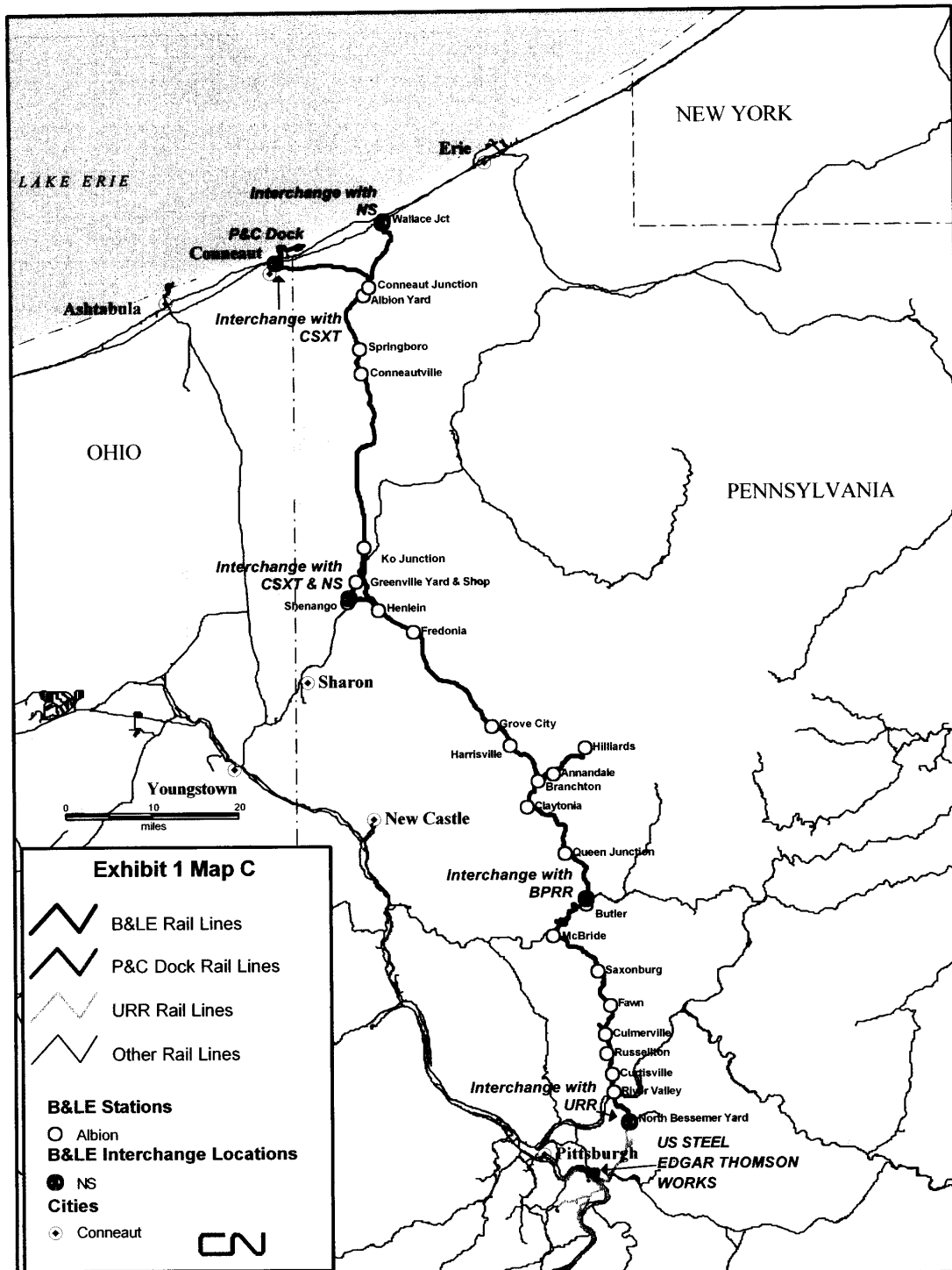
By the Board, Vernon A. Williams, Secretary.

COLOR FIGURES

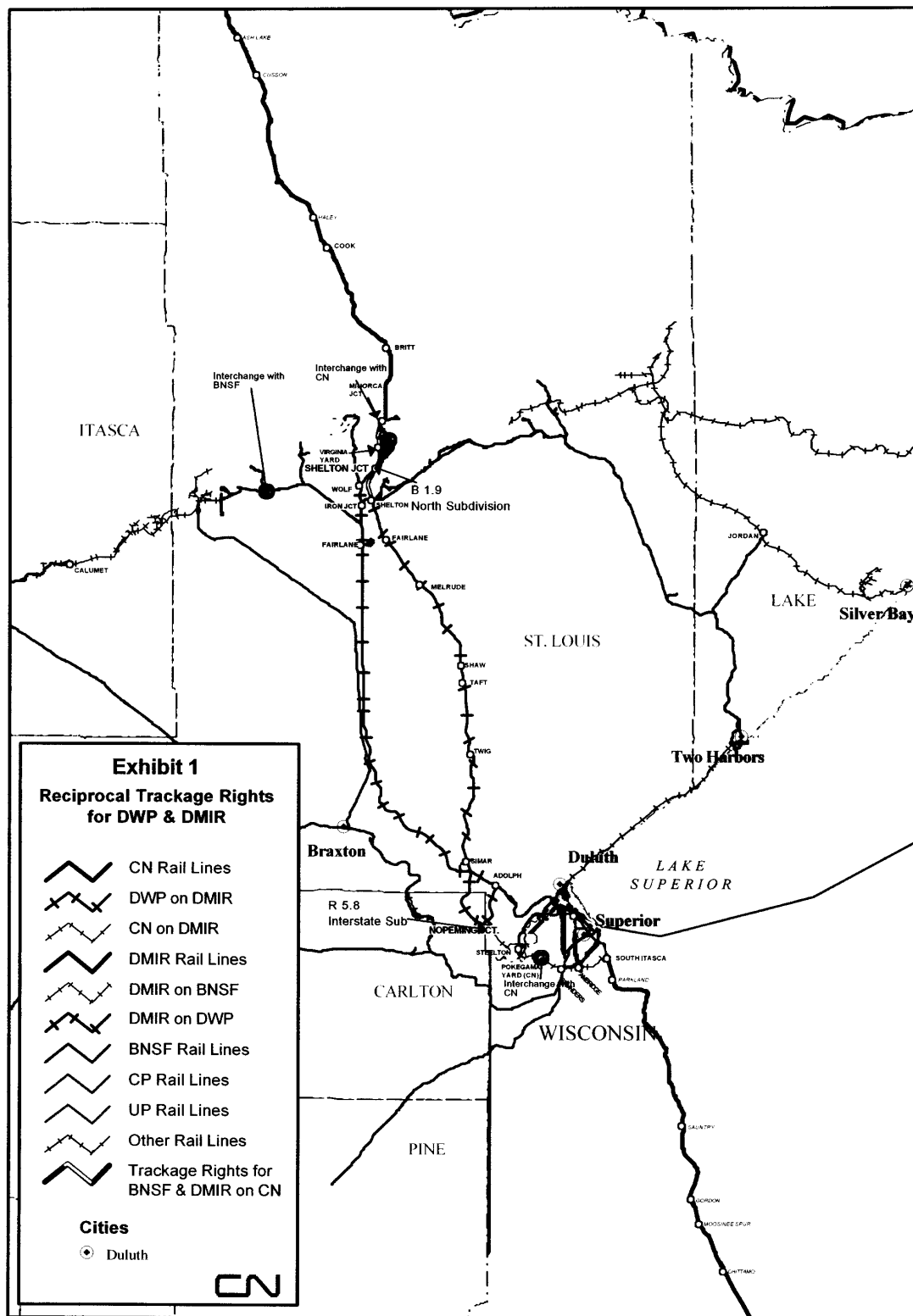




COLOR FIGURE 2



COLOR FIGURE 3



COLOR FIGURE 4