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April 13, 2004

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Room 700  
Washington, D. C. 20423



**RE:** Docket No. AB-55 (Sub-No. 643X), *CSX Transportation, Inc.—Abandonment Exemption—in LaPorte, Porter, and Starke Counties, IN*

Dear Secretary Williams:

Enclosed are the original and 10 copies of the Opposition of CSX Transportation, Inc. to the Motion to Strike filed by the Town of North Judson. Also enclosed are three 3.5-inch IBM-compatible floppy diskettes with the file Opposition.doc.

Please time and date stamp the additional copies of this letter and the Opposition and return them with our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer, Esq.  
Attorney for CSX Transportation, Inc.

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Public Record

Enclosures

BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (SUB-NO. 643X)



CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN LAPORTE,  
PORTER AND STARKE COUNTIES, IN

OPPOSITION OF CSX TRANSPORTATION, INC. TO MOTION TO STRIKE BY THE  
TOWN OF NORTH JUDSON

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Attorneys for: CSX TRANSPORTATION, INC.

Dated: April 13, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (SUB-NO. 643X)



CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN LAPORTE,  
PORTER AND STARKE COUNTIES, IN

OPPOSITION OF CSX TRANSPORTATION, INC. TO MOTION TO STRIKE BY THE  
TOWN OF NORTH JUDSON

CSX Transportation, Inc. (“CSXT”) opposes the Motion to Strike (the “Motion”) filed on April 8, 2004 by the Town of North Judson (“TNJ”). CSXT requests that the Surface Transportation Board (“Board”) deny the Motion.

TNJ specifically seeks to strike CSXT’s evidence as to the valuation of the track, ties and other track material contained in the Verified Statement of William R. Pemberton (the “Pemberton VS”), pages 16-28, and the argument relying on the Pemberton VS, except for the section relating to embankments on page 18. The only rationale apparent to CSXT for TNJ’s Motion is that either (1) TNJ is unfairly trying to shift the blame to CSXT for the lack of diligence by TNJ and its consultant, or (2) TNJ is trying to procedurally defeat CSXT’s valuation because TNJ recognizes that substantively CSXT’s position is correct and unassailable.

CSXT complied with all requests for information, filed all pleadings in a timely manner, and followed the Board’s regulations. CSXT did not harm TNJ. Any harm to TNJ was self-inflicted through lack of diligence.

Under 49 U.S.C. § 10904, the Board has developed a sound and efficient procedural regime for handling offer of financial assistance (“OFA”) proceedings. On November 3, 2003,

CSXT filed a petition (the “Petition”) under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 to abandon an approximately 32.97-mile line of railroad, in CSXT’s Western Region, Chicago Division, Wabash Subdivision, extending from milepost CF 0.63, at LaCrosse, to milepost CF 15.23, at Wellsboro, and from milepost CI 212.55, at TNJ, to milepost CI 230.92, at Malden, in LaPorte, Porter and Starke Counties, IN (the “Line”). The Board served and published in the Federal Register (68 FR 65759-65760) a notice of the filing of the Petition on November 21, 2003. *See CSX Transportation, Inc.—Abandonment Exemption—in LaPorte, Porter and Starke Counties, IN*, STB Docket No. AB-55 (Sub-No. 643X) (STB served November 21, 2003). The Board granted the Petition. *CSX Transportation, Inc.—Abandonment Exemption—in LaPorte, Porter and Starke Counties, IN*, STB Docket No. AB-55 (Sub-No. 643X) (STB served February 20, 2004).

Between the publication of the notice on November 21, 2003, and the date for filing the OFA, to comply with the requirement under 49 U.S.C. § 10904(b) that a railroad provide information on the value of the Line to a potential offeror, the Board’s rules require a railroad “to provide promptly upon request to a party considering an offer of financial assistance” ... the “minimum purchase price.” 49 C.F.R. § 1152.27(a)(i). TNJ never requested information on the track, ties and other track material (the “Track Components”). TNJ did request and receive the real estate appraisal prepared for CSXT. TNJ was not diligent in that it did not request the valuation of Track Components.

On March 1, 2004, TNJ filed an OFA to acquire the Line. Although the amount offered by TNJ was below the amount acceptable to CSXT, CSXT did not oppose the OFA because the OFA was only for the purposes of initiating negotiations. At no time did CSXT acquiesce in the amount of the OFA offered by TNJ.

The Board ruled that TNJ was financially responsible, accepted TNJ's OFA, postponed the effective date of the abandonment, and gave the parties until March 31, 2004 to negotiate the terms and conditions of the purchase price. *CSX Transportation, Inc.—Abandonment Exemption—in LaPorte, Porter and Starke Counties, IN*, STB Docket No. AB-55 (Sub-No. 643X) (STB served March 4, 2004). TNJ and CSXT negotiated, but did not reach an agreement.

The negotiations are not as TNJ relates them. CSXT's negotiator was Ms. Heidi Bash, Director Asset Management.<sup>1</sup> As related in the attached verified statement, negotiations were solely related to real estate, which TNJ consistently sought to devalue to \$149,500 so that the total purchase price would be \$1,200,000. Interestingly, TNJ now seeks to *decrease* the valuation of the real estate to \$25,700, presumably based upon its own recent analysis of records that it already had in its possession. At the same time, TNJ seeks to prevent CSXT from *increasing* the valuation of the Track Components, even though the basis for this increase is a well-documented recent change in scrap steel prices. This one-way, one-sided ratchet that TNJ would have the Board adopt is both inconsistent and blatantly unfair.

In any event, due to TNJ's intransigence on the real estate valuation, negotiations never reached the issue of the value of Track Components. CSXT, through Ms. Bash, rejected TNJ's counter-offer of \$1,200,000. TNJ then sought to appeal the rejection to Ms. Bobbie League, Assistant Vice President Asset Management. Ms. League spoke with Mr. Landrio only once on March 24, 2003 reiterating that she would not reduce CSXT's valuation. Again, Mr. Landrio did not raise the issue of the value of the Track Components, nor did he request information concerning their value. Ms. Bash has related these events in the attached verified statement.

On March 31, 2004, TNJ filed the Request to Set Terms and Conditions (the "Request").

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<sup>1</sup> TNJ's inability to even correctly identify the CSXT negotiator casts a serious cloud over all of TNJ's unverified factual assertions.

The Request provided no evidence as to the value of the Track Components. On April 5, 2004, CSXT filed its Response to the Request ("OFA Response"), in which CSXT provided verified statements on the value of the real estate and the Track Components.

TNJ then filed the Motion pursuant to 49 C.F.R. § 1117.1 instead of 49 C.F.R. § 1104.8, which provides that "[t]he Board may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document." It is clear that TNJ did not file the Motion under section 1104.8 because TNJ could not meet this burden of proof.

TNJ claims that CSXT "unfairly and prejudicially withheld evidence submitted by Mr. Pemberton until the filing of the Response, thereby effectively insulating it from investigation and rebuttal by the Town." Motion at 1. TNJ is blatantly attempting to shift its burden and subsequent failure to request information to CSXT by reversing 49 C.F.R. § 1152.27(a). CSXT does not have an affirmative obligation to provide TNJ with all information relevant to CSXT's valuation *sua sponte*. Rather, section 1152.27(a) requires CSXT to provide information if TNJ *requests* it. Accordingly, when TNJ requested CSXT's real estate appraisal, CSXT provided it. CSXT would have complied with a similar request for information concerning the valuation of the Track Components, but, TNJ never made such a request. This explains why TNJ's Motion is completely devoid of any mention of such a request.

TNJ, as the offeror, knew that the Board would set the price of the Line at the constitutional minimum value, if requested to set terms and conditions. The two components of the constitutional minimum value are the value of the real estate and Track Components. TNJ never addressed the Track Components, even though it is generally well known, and should be specifically known to an experienced rail valuation consultant, that the price of scrap steel had increased precipitously. But, apparently, TNJ never looked into the price of scrap steel.

CSXT is not suggesting that TNJ needed to engage in an expensive study of the value of scrap rail. CSXT is merely suggesting that a diligent entity would have either asked CSXT for the Track Component value, or made at least one phone call to determine whether there had been an increase, or even decrease, in the value of scrap steel. Instead, TNJ did nothing. Having failed to be diligent, TNJ now attacks, on fallacious procedural grounds, the only evidence of record on the value of Track Components, which CSXT presented.

TNJ complains that it has insufficient time to investigate the value of the Track Components submitted by CSXT. CSXT respectfully suggests that in the time it took TNJ to prepare and file the Motion, TNJ could have taken any one of a number of quick, simple steps (such as calling a third-party railroad scrap dealer) to verify the value of scrap steel submitted by CSXT. TNJ now seeks to shift the blame for its failure to do so to CSXT, alleging that “[t]he unfairness and lateness of CSXT’s filing has prevented effective investigation and rebuttal of the facts in that regard.” Motion at 7. This allegation is wholly unsupported.

CSXT’s OFA Response provided all of its evidence and fully justified the valuations. Prior to TNJ filing the OFA, CSXT gave TNJ the information TNJ requested on the valuation of the real estate. TNJ did not request any information on the value of the Track Components. CSXT acted fairly and did not withhold anything from TNJ that TNJ requested.

CSXT’s OFA Response was not late. CSXT’s OFA Response was filed five days after TNJ filed the Request, as required by 49 C.F.R. § 1152.27(h)(4). If TNJ is inferring that CSXT was late in producing evidence of the value of the Track Components, TNJ has no one to blame but itself for not asking CSXT for the information.

“Investigation” into the value of the Track Components was available to TNJ two ways. First, TNJ could have asked CSXT for the information. TNJ did not. Second, TNJ’s consultant

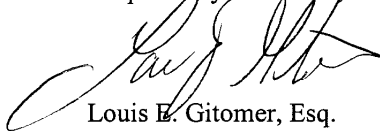
could have picked up a telephone and made one phone call to a third party railroad scrap dealer to determine that there had been a substantial fluctuation in the value of scrap steel. Again, TNJ did not act diligently in this regard.

TNJ also appears to insist on a right to rebut CSXT's valuation. "No rebuttal evidence will be permitted." 49C.F.R. § 1152.27(h)(4). TNJ has no right to rebut CSXT's valuation of the Track Components.

### CONCLUSION

TNJ did not act diligently in failing to investigate the value of the Track Components. Conversely, CSXT acted diligently in complying with all the regulatory requirements and requests from TNJ. TNJ knows that CSXT's valuation of the Track Components is accurate and consequently does not dispute its accuracy. CSXT contends that the Board should not reward TNJ's lack of diligence by striking the only evidence before it concerning fair market value for the Track Components.<sup>2</sup> CSXT respectfully requests that the Board deny the Motion.

Respectfully submitted,



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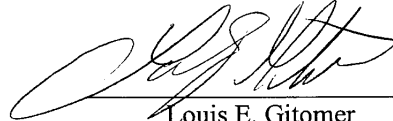
Dated: April 13, 2004

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<sup>2</sup> CSXT agrees with TNJ that "the Board is prohibited by 49 U.S.C. § 10904(f)(1)(B) from setting a purchase price below the fair market value of the line." Motion at 7.

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the Opposition of CSX Transportation, Inc. to Motion to Strike by the Town of North Judson to be served upon counsel for the Town of North Judson by express mail.

  
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Louis E. Gitomer  
April 13, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-55 (SUB-NO. 643X)

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CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN LAPORTE,  
PORTER AND STARKE COUNTIES, IN

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VERIFIED STATEMENT OF MS. HEIDI BASH

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My name is Heidi Bash. I am a Director Asset Management in the CSX Transportation, Inc. (“CSXT”) Network Rationalization group. Among my other duties is the negotiation of rail line sales, including sales of lines authorized for abandonment under the offer of financial assistance (“OFA”) process. I was directed by Ms. Bobbie League, Assistant Vice President, Network Rationalization to be CSXT’s negotiator with the Township of North Judson (“TNJ”) under the OFA process for the 32.97-mile line of railroad, in CSXT’s Western Region, Chicago Division, Wabash Subdivision, extending from milepost CF 0.63, at LaCrosse, to milepost CF 15.23, at Wellsboro, and from milepost CI 212.55, at TNJ, to milepost CI 230.92, at Malden, in LaPorte, Porter and Starke Counties, IN (the “Line”). I kept Ms. League apprised of the status of negotiations throughout the process.

Negotiations for this Line were very difficult and ultimately unsuccessful. I negotiated with TNJ’s designated negotiator, Mr. Gary E. Landrio on several occasions between March 1, 2004 and March 23, 2004. I believe that TNJ has not fairly represented the negotiations in the Motion to Strike that TNJ filed on April 7, 2004.

Throughout the negotiations Mr. Landrio sought concessions on the value of the real estate so that TNJ could acquire the Line for \$1,200,000. I refused to accept less than the

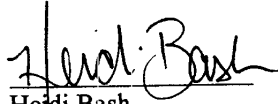
\$479,000 appraised value of the real estate that had been prepared by Mr. Charles W. (Sandy) Rex III for CSXT. Mr. Landrio never even addressed the value of the track, ties and other track material (the "Track Components") with me. He did not ask me for information about the value of the Track Components, which I would have shared with him. He did not even address the substantial increase in the value of scrap steel, which I knew would substantially increase the value of the Track Components from that set out in CSXT's petition for exemption. Because of Mr. Landrio's fixation on the real estate, we never discussed the value of Track Components.

I notified Ms. League after Mr. Landrio and I failed to come to agreement. Mr. Landrio then attempted to contact Ms. League on March 23, 2004 and Ms. League spoke to Mr. Landrio on March 24, 2004. Ms. League related that conversation to me. Ms. League and Mr. Landrio never discussed the value of the Track Components. Moreover, Ms. League never offered to reduce CSXT's price for the Line.

### VERIFICATION

I, Heidi Bash, 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 April 12, 2004

  
Heidi Bash