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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-556 - 2x

**RAILROAD VENTURES, INC. - ABANDONMENT
BETWEEN YOUNGSTOWN, OHIO AND DARLINGTON, PA
IN MAHONING AND COLUMBIANA COUNTIES, OHIO
AND BEAVER COUNTY, PA**

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VERIFIED STATEMENT OF GEORGE D. WEHNER, ASA

I. INTRODUCTION

A. Professional Experience

My name is George D. Wehner. I am currently a private consultant specializing in the areas of railroad track maintenance and railroad real estate and fixture evaluation and appraisal. My professional qualifications are more fully set forth in the Verified Statements which I prepared on behalf of Railroad Ventures, Inc. ("RVI") and filed with the Surface Transportation Board in this proceeding on April 3, 2003 and August 18, 2003. In those statements, I reviewed and audited the documents and invoices submitted on behalf of CCPA and CCPR to the Board in justification for expenditures made from the \$375,000 escrow account established by the Board from RVI's proceeds of sale.

As I stated in my previous Verified Statements, from 1986 to 1997 I have had substantial personal and professional experience inspecting and evaluating track conditions on the Youngstown and Southern Railroad line as a rail inspector for the Ohio DOT Division of Rail Transportation (now the Ohio Rail Development Commission). In

that capacity, I acted as project engineer and the inspector for several different state rehabilitation projects on the Y&S line and I have personally hauled and inspected that line on several different occasions. Rather than repeating by prior testimony, I would simply refer the Board to the testimony I submitted in my April 3, 2003 statement from Page 4 to 16 which described the history of deferred maintenance on the Y&S line and the deteriorated condition of that line prior to its acquisition by RVI in 1996. I am the only individual who has testified in this proceeding that has first hand professional knowledge concerning track maintenance conditions on this rail line over that extended period of time. None of the witnesses testifying on behalf of CCPA and CCPR in support of their Petition to Reconsider and Reopen have personal knowledge regarding the condition of this line prior to the acquisition of the line by CCPA. Accordingly, they have no personal knowledge concerning what line repairs and rehabilitation work was necessitated by track conditions occurring prior to or during the period in which RVI owned this rail line.

B. Assigned Task

In view of my prior professional experience and personal knowledge regarding the Y&S rail line and my past audit of the CCPA/CCPR rehabilitation documents submitted to the Board in this proceeding, I was asked by Railroad Ventures, Inc. to review the verified statements and documents submitted by CCPA and CCPR in support of the Joint Petition to Reconsider and Reopen to determine if that additional testimony and documentation provides any basis for adjustments in the \$217,282 refund ordered by the STB in its December 13, 2004 order. I have also reviewed and evaluated the CCPR documents to determine whether they address any of the omissions or failures of earlier

submissions by CCPA and CCPR in 2003 and to assess the authenticity and credibility of those documents given the questionable nature of previous submissions by CCPA and CCPR in this proceeding.

II. ASSESSMENT OF TESTIMONY AND DOCUMENTATION

As the Board's prior orders in this proceeding related to the escrow account made clear and as confirmed by the Board's December 13, 2003 order, the escrow account was established for the purpose of providing funds from RVI's proceeds of sale of this line which could be used by CCPA and CCPR for various repairs attributable to RVI's period of ownership. While my reading of the prior STB orders in this matter indicates that those repairs were directed primarily to various crossings which RVI allowed to be covered over, the Board has accorded a more liberal interpretation to the scope of the repairs payable from the escrow account. The propriety of that determination is for others to decide and RVI has only requested that I evaluate whether the additional testimony and documentation submitted by joint petitioners provides any basis for reconsideration of the refund ordered by the Board to be paid by CCPA and CCPR.

1. Old Route 51 , Cannelton Road Crossings

The joint petitioners have tried to contest the Board's determination that repairs made to these two crossings were not supported by appropriate documentation to establish that these reconstruction projects had been awarded on the basis of competitive bidding. The verified statement of Mr. Steve Hanes claims that "I gave a preliminary oral bid to Tim Robbins or Bud Gain and later prepared and forwarded a written proposal that would have confirmed my earlier bid." There are a number of problems with this assertion. First, there is no way to confirm it, and at this point in time, Mr. Hanes cannot

even remember to whom he gave this oral bid. Second, as I indicated in my April 3, 2003 testimony, competitive bidding procedures require that notices of the scope work be sent out to all prospective bidders, that proposals for that work be filed by a specific deadline, that within a specified period after the deadline all bids will be opened and upon opening, the winning bidder notified within a specified period. The bid is then awarded to the winning bidder and the work is commenced during the course of which and at the end of which invoices are submitted for progress payments and for final payment. Contractors in Ohio told me by the time these crossing projects were undertaken, CCPR had simply ceased efforts to obtain competitive bids and that this work was being awarded to Ohio Track as a matter of course. Thus the testimony submitted by Mr. Hanes and Mr. Drake confirm that joint petitioners failed to use any formal, generally accepted procedures for competitive bidding of these two projects. Moreover, as I indicated in my April 3, 2003 testimony, CCPR and its contractors had no problem complying with competitive bidding requirements for those projects funded by state and federal agencies. Accordingly, based on my professional experience there is no question but that CCPR failed to comply with the Board's competitive bidding requirements with respect to the Old Route 51 and Cannelton Road crossing projects.

2. 2001 Administrative Overheads and Federal and State Grant Overheads

The Board also disallowed \$119,806 in administrative overhead expense for 2001 and \$10,656 for overhead expense associated with work funded by federal and state grants. The Board disallowed these expenses because CCPR provided no support for the percentages of time which its employees attributed to repair work on the Y&S line related to RVI's period of ownership. Given the documentation which CCPR and CCPA

submitted to the Board in 2003, this was the only conclusion which the Board could have reached in addressing this issue. Moreover, given the absence of any documentation of CCPR overhead expenses or the allocation of those expenses between repairs attributable to RVI's ownership and repairs attributed to prior owners' deferred maintenance, there was no discernable basis upon which CCPA or CCPR could even develop an allocation formula between these two categories of expenses. Accordingly, in 2003, CCPA and CCPR simply allocated all of these expenses to RVI's period of ownership and paid them from the escrow account. The Board's December 13, 2004 decision clearly recognizes this failure and properly rejected the payment of those overhead expenses from the escrow account.

The verified statement submitted by Mr. Drake, Mr. Michael Robbins and Mr. William K. Robbins, Jr. provide no basis for allocating overhead expenses between repairs required by RVI's period of ownership and rehabilitation work attributable to the deferred maintenance of prior owners. Indeed, there appears to be no consciousness on the part of these individuals that such an allocation is required. The underlying assumption of their verified statements is that all of the repair work undertaken by CCPR was attributable to RVI's period of ownership and therefore all overheads were payable from the escrow account. That, however, was not the purpose for which the Board established the escrow account. As I noted in my previous testimony, it is often difficult to attribute repairs or rehabilitation work to one period or another, but CCPA and CCPR did identify certain projects when it requested the STB to establish the escrow accounts and the Board afforded CCPR and CCPA significant latitude (some would argue too

much latitude) in approving the payment of various repair expenses from the escrow account.

In evaluating this issue on behalf of RVI, I have found the Federal Railroad Administration regulations set out at 23 C.F.R. §140.907 to be instructive. This section deals with overhead and indirect construction costs and provides guidance for federal reimbursement of railroad companies for FHWA crossing reconstruction and rehabilitation projects. In order to obtain federal reimbursement for these projects, §140.907 requires that with respect to overhead costs:

- (1.) costs are distributed to all applicable work orders and other functions on an equitable and uniform basis in accordance with generally excepted accounting principles;
- (2.) the costs included in the distribution are limited to costs actually incurred by the railroad;
- (3.) the costs are eligible in accordance with federal acquisition regulations;
- (4.) the costs are considered reasonable;
- (5.) records are readily available at a single location which adequately support the costs included in the distribution, the method used for distributing the costs, and the basis for determining additive rates;
- (6.) the rates are adjusted at least annually taking into consideration any over recovery or under recovery of costs; and
- (7.) the railroad maintains written procedures which assure proper control and distribution of the overhead and indirect construction costs.

These regulations were applicable to the federally funded crossing reconstruction and rehabilitation work undertaken by CCPR and CCPA at various road crossings on this

line. While I have not audited those projects, one can assume that CCPR's contractors complied with these regulations in their submissions and allocation of overhead expenses for the federally funded crossing projects. Given the verified statements submitted by CCPR officers and employees in support of the petition to reopen, which concede their failure to maintain time records and other documentation to support the allocation of overheads, one can appreciate why CCPR contracted those crossing projects to firms familiar with federal record keeping and overhead expense allocation requirements.

It is not, however, the purpose of my testimony to question overhead allocations with respect to federally funded crossing projects. Nor do I believe that the STB's orders in this proceeding incorporated each detail of §140.907 with respect to payments from the escrow account. However, it is my professional opinion that the Board's finding that CCPA and CCPR failed to submit any evidence or documents to support their overhead allocations was consistent with cost accounting principles for track construction and rehabilitation projects. The allocation of overhead and indirect construction costs is an issue that is routinely encountered on virtually every track construction project and contractors who do that work deal with the allocation of overheads by maintaining and providing documentation of those expenses and their allocation percentages for each particular project.

The admissions by both Michael A. Robbins and William J. Robbins, Jr. that they did not maintain time records and did not include other expenses, such as legal expenses, in their original overhead submissions only confirm their failure to maintain appropriate and adequate documentation of these overhead and indirect expenses which the Board properly cited for disallowing payment of those expenses from the escrow account.

3. CCPA/CCPR Additional Documentation

Turning to the additional documentation submitted by CCPA and CCPR, I find nothing in those documents which support reconsideration of the Board's December 13, 2004 decision. Indeed, my review of the documentation only confirms my observations in 2003 that CCPR maintained records in an extremely slip shod and unprofessional manner. These documents raise numerous questions. First, I would question whether 20% was a reasonable overhead percentage. In 2001, Rail America had general administrative costs at 16% of operating costs as indicated in its 2001 annual report. Furthermore, throughout the construction industry most firms in order to be competitive limit overhead to 15% of project costs. In view of these facts, 20% appears to be at the high end of an overhead range and in the absence of adequate underlying records and documentation, the CCPR overheads appear to be inflated.

Other items noted on the ledger detail records raise similar questions. On Page 14 there are entries for: Danny Robbins personal Visa in the amount of \$10,000, Dan Robbins Furniture Ohio Office \$529, Tim Robbins mileage \$703, Ricky Vaughn meal expense \$400. On Pages 15 and 16 there are entries to Delta Dental of over \$13,000. On Page 28 there are meal expenses charged to Visa card totaling \$5,544. On Page 29, there are charges for management fees of \$10,000 per month for a total of \$100,000. On Page 30 there is telephone expenses of \$8,431, a portion of which was paid to SunCom a southeastern wireless telephone company. On Page 32 there are \$8,885 in rents to Columbia Manor Apartments and Rent Way. While certain of these charges are likely legitimate business expenses related to travel, meals and other costs incurred in connection with the conduct of CCPR rail operations, these expenses appear to be

inflated, particularly in view of the startup operations on CCPR during these time periods. Moreover, once again allocation issue arises as to whether these expenses are attributable solely to CCPR or are also attributable, at least in part, to other D&R rail entities or operations since the Robbins family members likely devoted a percentage of their time while in Ohio to the business affairs of their other companies in addition to CCPR. If these expenses relate solely to CCPR operations, then on what basis are they allocated to repairs required by RVI's ownership versus those caused by prior owners? CCPR and CCPA witnesses do not even address that question.

I have also reviewed the general ledger detail report, which records CCPR postings for the periods of 1 through 10 ending 10/31/01. These postings reveal the following:

(1) 115 ledger entries to correct posting errors on 34 pages, as many as 16 corrections on the same page;

(2) numerous bank fees, one time fees as high as \$90. These bank fees were assessed 40 times over eight months. Eighteen assessments were even amounts that one might speculate to be "NSF" fees. These entries total \$710.66;

(3) ledger entries indicating that checks were written before deposits were made to make the checks good.

These entries indicate serious cash flow problems, inadequate accounting procedures, and sloppy bookkeeping.

My investigation of the Time Roll Reports also reveal many instances where time was charged to the escrow account that was completely unrelated to track work or repairs.

The following are actual notations from CCPR employee timesheets:

(1) There are numerous entries where track work and train service times are commingled. i.e. brush cutting, moved two cars off main 8 ½ hours: brush cutting and train 9 ½ hrs.; train, track, and miscellaneous 9 ½ hours etc.;

(2) Two man days plus overtime (20 hrs. total) mowing and cleaning at Negley, Ohio;

(3) Two man days, 22 hours total train and brush cutting;

(4) Track work/repairing locomotive 8 hrs.;

(5) Helped brush cutters and train 12 hrs.;

(6) One employee charged 158.5 hours of which only 3 hours were spent on track work, the balance was train service as a student engineer;

(7) No matter whether an employee worked on track work or other endeavors after a 40 hour week, overtime is charged to the escrow account;

(8) One employee worked 12 ½ hours on track work and train service. If this employee worked on track and then went into train service, he violated FRA Hours of Service Rules;

(9) Two man days plus overtime (18 hrs.) clean tool shed;

(10) Three man days (24 hrs.) classes on NS Book of Rules.

Once more, these time sheet entries only confirm the lack of any consistent and adequate record keeping by which CCPR could properly allocate wages and hours to track repair work versus train service versus engineer qualification training versus equipment repair. Moreover, these records allow no possible basis for allocating employee wages and salaries to repair work attributable to RVI's period of ownership versus prior owners.

The documents submitted by CCPA and CCPR merely confirm the conclusions reached by the Board in its December 13, 2004 order.

Finally, having reviewed these records, there is no way to determine whether or not these documents were prepared contemporaneously with the work and services represented in them without further questioning of the individuals responsible for preparing these documents. Moreover, if the documents were contemporaneously prepared then they could have been submitted to the Board by CCPR in support of its claimed expenditures from the escrow accounts in 2003. However, my review of these documents indicates why they were not. They would only have substantiated the failure of CCPR to properly account for and segregate various categories of expenses. They also confirm the impropriety of the attempted allocation of 100% of 2001 overheads to RVI repair work in order to obtain reimbursement of those expenses from the escrow account. Given the admissions by CCPR witnesses that they did not maintain appropriate time sheets or logs, it is apparent to me that CCPR submitted its 2001 overhead costs for payment from the escrow account with knowledge that they did not maintain adequate records and accounting procedures to support an allocation of those expenses to repairs attributable to RVI's period of ownership.

Thus, there is nothing in CCPA and CCPR's verified statements or documentary submissions which could cause the Board to reconsider its December 13, 2004 decision and order. All of the testimony and all of the documentation submitted CCPA and CCPR in 2005 could just as easily have been submitted to the Board in 2003. Indeed, most of the testimony submitted by Mr. Drake and William K. Robbins, Jr. relates to complaints and arguments about matters leading up to the establishment of the escrow account and

why those circumstances should excuse CCPR and CCPA from complying with the Board's bidding and accounting requirements. Since those matters were argued and addressed in 2003, there is no reason to revisit those issues in 2005.

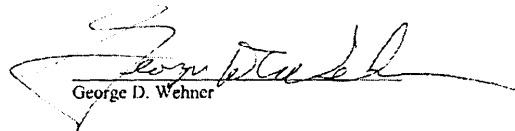
III. CONCLUSION

Accordingly, based on my review of the Joint Petition for Reopening and Reconsideration and the supporting verified statements and documents, it is my professional opinion that the Board's December 13, 2004 decision properly disallowed \$217,282 in payments from the escrow account and that those disallowances are based on sound and proper cost accounting standards and competitive bidding requirements which were not observed or followed by CCPA and CCPR.

/s/37374

VERIFICATION

I, George D. Wehner, ASA, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.


George D. Wehner