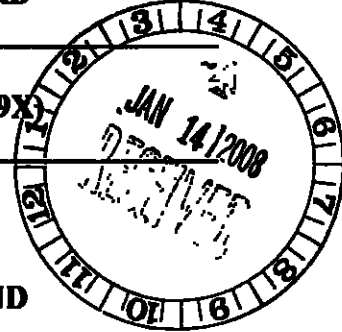


22/264

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-55 (Sub- No. 659X)

**CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION -
IN ALLEGANY COUNTY, MARYLAND**



ENTERED
Office of Proceedings
JAN 14 2008
Part of
Public Record

MOTION TO COMPEL

Now comes James Riffin ("Riffin"), who herewith files this Motion to Compel CSX Transportation to issue to Riffin a deed in Riffin's name, transferring to Riffin all of CSX's rights, title and interest in the Line of railroad which is the subject of the above entitled proceeding ("Line"), and for reasons states

1. On August 25, 2005, CSX filed to abandon 8.54 miles of line known as the Georges Creek Subdivision, located in Allegany County, Maryland.

THE FIRST LEGAL INFIRMITY

2. Shortly thereafter, Gerald Altizer, one of two members [the other member was Patrick Stakum] of a legal entity known as "Western Maryland Services, L.L.C., a West Virginia Limited Liability Company," contacted John Heffner, an attorney authorized to practice before the Board. Mr. Altizer requested Mr. Heffner prepare, then submit, to the Board an Offer of Financial Assistance ("OFA") to purchase the Line. Mr. Heffner prepared a Notice of Intent to Purchase the Line, wherein Mr. Heffner indicated the putative purchaser would be "WMS LLC." Unfortunately, Mr. Heffner **did not** indicate "WMS LLC" was an acronym for "Western Maryland Services, L.L.C., a West Virginia Limited Liability Company." **FIRST LEGAL INFIRMITY:** At the time the Notice of Intent was filed, there was no legal entity entitled "WMS LLC," either in West Virginia or in Maryland.

3. By decision served on September 23, 2005, in reliance upon Mr. Heffner's representations, [including the tacit representation that "WMS LLC" was in fact a legal entity, when in reality it was not], the Board accepted the Notice of Intent of "WMS LLC"

4. On October 21, 2005, "WMS LLC" filed an OFA to purchase the Line. Accompanying the OFA were financial statements from individuals who had offered to provide the requisite capital needed to purchase the Line.

5. On October 26, 2005, based on the financial statements of the individuals who had offered to provide the requisite capital needed to purchase the Line, the Board found "WMS LLC" to be "financially responsible "

6. On November 21, 2005, "WMS LLC" advised the Board that it had agreed to accept the purchase price and terms offered by CSXT for the acquisition and operation of the Line.

7. By decision served on December 21, 2005, the Board granted "WMS LLC" authority to acquire and operate the Line.

8 On February 15, 2006, Mr. Altizer, the managing member of "Western Maryland Services LLC, a West Virginia Limited Liability Company," telephoned Riffin. During this telephone conversation, Mr. Altizer revealed that the individuals who had previously agreed to provide the requisite capital with which to purchase the Line, were withdrawing their offer to provide financial assistance Mr Altizer then asked if Riffin would provide the requisite capital. After some discussion, Riffin agreed to provide the necessary capital, providing Mr Altizer transferred 98% of the ownership interest in Western Maryland Services LLC to Riffin, including Western Maryland Services LLC's right to acquire the Line. After executing the appropriate documents, Riffin acquired a 98% ownership interest in Western Maryland Services LLC

9. On March 2, 2006, Riffin wired a portion of the purchase price to CSX

10. Around May 15, 2006, Riffin realized that the Board's original finding of financial responsibility was based on the financial statements of investors who no longer proposed to provide capital to purchase and operate the line. Riffin further realized that a strict reading of the Board's rules would require the Board to make a separate finding regarding whether Riffin was financially responsible. In addition, Riffin realized that the Board had granted authority for "WMS LLC" to acquire and operate the line. Unfortunately, when that authority was granted on December 14, 2005, there was no legal entity known as "WMS LLC," in either West Virginia or in Maryland. The only legal entity in existence at that time was "Western Maryland Services, L L C., a West Virginia limited liability company." In various filings with the Board, Mr. Altizer and Mr. Heffner used the acronym "WMS," without first indicating "WMS" was an acronym for "Western Maryland Services."

11. On May 26, 2006, Riffin had the legal entity "WMS L.L.C." chartered in Maryland. Riffin is the sole owner of "WMS L.L.C., a Maryland limited liability company." It should be noted, "WMS L.L.C., a Maryland limited liability company," **did not exist** on December 14, 2005, the date the Board granted "WMS LLC" authority to acquire and operate the Line.

12. 49 CFR 1152.27 (i) states prior to the consummation of a purchase under the Financial Assistance Procedures enumerated in 49 CFR 1152.27, an Offeror may substitute its corporate affiliate as the purchaser, provided the Board has determined either:

- "(i) The original offeror has guaranteed the financial responsibility of its affiliate, or
- (ii) The affiliate has demonstrated financial responsibility in its own right."

13. Since the Board's decision regarding the "financial responsibility" of the original offeror was based on the personal financial statements of two individuals who no longer intended to provide any capital for purchase of the Line, and since a finding of "financial responsibility" is a condition precedent to the Board granting authority to acquire a Line, and since it was not clearly specified that "WMS LLC" was an acronym for "Western Maryland Services LLC, a West Virginia Limited Liability Company," on June 14, 2006, a Motion to Substitute Purchaser was filed with the Board, asking the Board to make a finding that Riffin was financially responsible, and asking the Board to grant Riffin authority to acquire and operate the Georges Creek Line.

Riffin reasoned that were the Board to find Riffin to be financially responsible in his own right, then per 49 CFR 1152.27 (ii), Riffin could acquire the Line in his individual capacity, and in doing so, the legal infirmities associated with the change in investors, and the legal infirmities associated with the acronym "WMS LLL," would be mooted.

14. On June 20, 2006, Riffin wired to CSX the balance of the purchase price of the Line.

15. When Charles Spitulnik, counsel for the State of Maryland, saw the Motion to Substitute Purchaser on the Board's Web Site, and became aware that Riffin was about to purchase the Line, he contacted Allegany County, Maryland, disclosed to Allegany County the controversy between Riffin and the State of Maryland, then offered to file derogatory comments on behalf of Allegany County. On June 30, 2006, Allegany County, Maryland, filed a Motion seeking an extension of the time within which to reply to the Motion to Substitute Purchaser

16. On July 5, 2006, the Board granted Allegany County's request for an extension of time to file comments, extending the filing deadline until July 17, 2006. In its decision granting the extension of time, the Board stated the extension "should not unreasonably burden WMS or Mr. Riffin " Little did the Board know just how burdensome this seemingly reasonable extension of time to file, would become.

17. From Wednesday, July 5, 2006 through Friday, July 7, 2006, Riffin, John Heffner, CSX's attorney, Louis Gitomer, and CSX's asset disposal representative, Dave Geraci, discussed the legal ramifications associated with the above facts The attorneys concluded it was "no big deal" and postulated that the Board was unlikely to object to title being transferred prior to rendering a decision on the Motion to Substitute Purchaser. Riffin preferred to wait another 10 days, hoping the Board would render a decision that would eliminate the potential title defect problems. CSX's real estate department made a unilateral decision to prepare a deed with "WMS LLC" listed as the Grantee

SECOND LEGAL INFIRMITY

18. On **July 10, 2006**, CSX, determined to get the Line off of its corporate books, prepared a Quit Claim Deed, wherein CSX deeded the Line to “WMS LLC, a **Maryland** limited liability company.” See **Exhibit A**. On that same date, CSX’s attorney, Mr. Gitomer, sent a consummation letter to the Board. **SECOND LEGAL INFIRMITY:** “WMS LLC, a **Maryland** limited liability company,” has never received Board authority to acquire and operate a line of railroad.

19. On July 12, 2006, Riffin sent a letter to the Board, detailing the events described above

20 On July 17, 2006, Allegany County, Maryland, filed its derogatory comments

21 On **August 18, 2006**, the Board served a decision wherein it found Riffin, in his individual capacity, to be “financially responsible,” and further granted Riffin, in his individual capacity, authority to acquire and operate the Line.

22 Had the Board made a finding that Riffin was financially responsible and had the Board granted Riffin authority to acquire and operate the line, prior to the date title to the line was transferred, the potential title defects Riffin has identified, would have been mooted. Unfortunately, CSX executed a deed transferring title to “WMS LLC, a **Maryland** limited liability company,” a legal entity which **has never received authority to acquire the Line**. Were this not a line of railroad being transferred, there would be no potential title defect, for “WMS L.L.C.” is a Maryland legal entity authorized to own real estate. However, since this transaction does involve the sale of a line of railroad, prior to that sale, approval from the Board must be sought and granted. And without that prior approval, the sale would be null and void, and could / would be set aside.

23 Riffin’s legal title to the Line has been brought into dispute. In a suit filed in Allegany County Maryland, Case No. C-07-29061, Mr. Spitulnik, counsel for Allegany County, argued Riffin has no title to the Line. In another proceeding currently before this Board, *Petition of James Riffin for Declaratory Order*, FD No. 34997, Mr. Spitulnik recently (January 7, 2008) filed the Reply of the Maryland Transit Administration, the Maryland Department of the

Environment and County of Allegany, wherein Mr. Spitulnik argued Riffin has no title to the Line.

24 Riffin has repeatedly requested CSX issue another Deed, transferring title to the Line to Riffin in his individual capacity. CSX has adamantly refused to issue a corrected Deed.

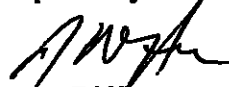
25. WHEREFORE, for the foregoing reasons, Riffin would ask that the Board issue an Order Compelling CSX Transportation, Inc.:

A. To execute a deed granting to James Riffin, in his individual capacity, title to the Line of railroad which is the subject of the above entitled proceeding; and

B To date the deed August 18, 2006 [the date Riffin received authority to acquire and operate the Line in his individual capacity]; and

C. For such other relief as would be appropriate and just

Respectfully submitted,


James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2008, a copy of the foregoing Motion to Compel, was served by first class mail, postage prepaid, upon Louis E. Gitomer, Esq., Ball Janik LLP, Suite 225, 1455 F St NW, Washington, DC 20005, counsel for CSX.



James Riffin

QUITCLAIM DEED

THIS QUITCLAIM DEED, made this 10th day July, 2006, between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, , hereinafter called "Grantor", and WMS, LLC, a Maryland limited liability company, whose mailing address is 1941 Greenspring Drive, Timonium, Maryland 21093, hereinafter called "Grantee",

(Wherever used herein, the terms "Grantor" and "Grantee" may be construed in the singular or plural as the context may require or admit, and for purposes of exceptions, reservations and/or covenants, shall include the heirs, legal representatives and assigns of individuals or the successors and assigns of corporations)

WITNESSETH

THAT Grantor, for and in consideration of the sum of SEVEN HUNDRED TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$725,000 00), to it in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby RELEASE, REMISE and forever QUITCLAIM unto Grantee, all right, title and interest of Grantor, if any, in and to that certain tract or parcel of land, consisting of approximately 8 54 miles of CSXT's real property and right-of-way as well as associated property from approximately Milepost BAI 18.46, at end of track near Carlos (Valuation Station TBD) to Milepost BAI 27, at or near Morrison (Valuation Station TBD), in Allegany County, Maryland, hereinafter collectively designated "the Premises", and as shown on Exhibit A, described on Exhibit A-1, with cut points indicated on Exhibits A-2 and A-3, attached hereto and made a part hereof, including but not limited to any and all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, signals, crossing protection devices, communication lines and poles that are affixed to the Premises between the above described points as of the date of this Deed (hereinafter "Rail Assets"), "AS IS, WHERE IS," and without warranty of any kind, expressed or implied. The Premises and Rail Assets are hereinafter collectively referred to as the "Line". Excluded from this conveyance are any and all railroad rolling stock, locomotives, automobiles, trucks, automotive equipment, machinery, office and computer equipment, radios, furniture, tools, inventories, materials and supplies, located on the Line as of the date of this Deed, hereinafter collectively referred to as "Excluded Personal Property", and those certain parcels of land identified on Exhibits A-4 and A-5 attached hereto and made part hereof. Subsequent to the date of this deed, CSXT shall remove from the Line all Excluded Personal Property.

TO HAVE AND TO HOLD the Premises, and all the estate, right, title, lien, interest and claim whatsoever of Grantor therein, either in law or equity, and all improvements thereon and appurtenances thereto, unto the proper use, benefit and enjoyment of Grantee, Grantee's heirs and assigns or successors and assigns, forever

Grantor, by its undersigned officer, hereby certifies that the full value of all land or property conveyed hereby, or the actual consideration for the release of all property rights quitclaimed hereby, is \$725,000 00, including any property exchanged and any financing