

LAROE, WINN, MOERMAN & DONOVAN
Attorneys at Law
1250 Connecticut Avenue, N.W., Suite 200
Washington, DC 20036
Telephone (202) 298-8100
Fax (202) 298-8200



July 10, 2008

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E St., S.W.
Washington, DC 20423

ENTERED
Office of Proceedings

JUL 10 2008

Part of
Public Record

Re STB Ex Parte No. 677 (Sub-No. 1) Common Carrier Obligation of
Railroads—Transportation of Hazardous Materials

Dear Acting Secretary Quinlan:

Pursuant to the Decisions served by the Board on June 4, June 19 and June 23, 2008, the Chlorine Institute Inc. (the Institute) hereby submits its written testimony in the above-captioned proceeding. The undersigned will appear at the hearing in the proceeding on July 22, 2008, and will be accompanied by Tom O'Connor of Snively, King, Majoris, O'Connor & Lee, Inc. The Institute is requesting fifteen minutes to present its views in this matter.

Respectfully submitted,

Paul M. Donovan
Counsel for the Chlorine Institute, Inc.



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 677 (Sub-No. 1)

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Office of Proceedings**

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Public Record**

**COMMON CARRIER OBLIGATION OF RAILROADS-
TRANSPORTATION OF HAZARDOUS MATERIALS**

WRITTEN TESTIMONY OF THE CHLORINE INSTITUTE, INC.

**Paul M. Donovan
LaRoe, Winn, Moeman & Donovan
1250 Connecticut Avenue, N.W. Suite 200
Washington, DC 20036
(202) 298-8100**

Counsel for the Chlorine Institute, Inc.

July 10, 2008

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I. Introduction

By Notice of June 4, 2008, the Board opened this proceeding seeking comments on various issues related to the rail transport of hazardous materials generally and toxic-inhalation-hazard ("TIH") materials in particular. The members of the Chlorine Institute, Inc (the "Institute") offer for transportation more than 40 percent of the TIH materials moved by rail each year. As noted in our previous testimony in the lead Docket Ex Parte 677, chlorine is an essential commodity upon which the Nation's health, safety and economy depend. Chlorine is essential in the production of a staggering list of products used each day in modern life. Everyone knows about chlorine's use in water disinfection and sewage treatment, but chlorine is essential to the manufacture of automobiles, computers, telephones, fuel cells, pharmaceuticals, rocket propellants, surgical sutures, paint removers, photographic supplies, virtually every plastic material made and literally thousands of other products. Chlorine and chlorine chemistry is indeed essential in our modern lives.

Pursuant to the Board's invitation the Institute will demonstrate why a request for the rail transportation of TIH materials in conformance with Federal laws and regulations is by definition a reasonable request and cannot be refused by a railroad. The Institute will challenge the assertion that railroads face any more potential "ruinous liability" than a host of other industries that operate in the manufacturing and transportation sectors, and it will also demonstrate that railroad liability and insurance costs have actually declined over the past few years. The Institute is forced respectfully to note that the Board has no authority or jurisdiction to usurp the authority of the Congress by attempting to establish some sort of a Price-Anderson mechanism, nor does it have the authority or jurisdiction

to invade the tort and indemnification laws of the various states. Finally, the Institute will seek support for the oft stated but never verified proposition that there are some substantial unique costs incurred in the handling of TIH materials, and note that the rates on TIH shipments, particularly chlorine, are significantly higher than rates on other commodities.

II. Argument

A. Since Chlorine And Other TIH Materials Are Essential To The Nation's Economy And The Well Being Of Its People, Congress And Federal Agencies Have Long Regulated Their Movement by Rail In A Comprehensive Manner And The Board Must Defer To The Jurisdiction Of Those Agencies In Matters Of Safety.

The primary question to be addressed in this proceeding is Does a request for rail transportation of chlorine or other TIH materials constitute a reasonable request or an unreasonable request for rail service? As a matter of law, such a request is reasonable, and the Board has no authority to hold to the contrary

On April 1, 2008, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued a Notice of Proposed Rulemaking entitled *Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials* (73 Fed. Reg. 17818). This Rulemaking was largely the result of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users Pub-L. 109-59 passed by the Congress on August 10, 2005 ("SAFETEA-LU"). SAFETEA-LU added section 20155 to Title 49 of the U S Code. Section 20155 required, among other things, the Federal Railroad Administration ("FRA") to (1) validate a predictive model quantifying the relevant dynamic forces acting on railroad tank cars under accident conditions, and (2) initiate a

rulemaking to develop and implement appropriate design standards for pressurized tank cars.¹

As has historically been the case, PHMSA and FRA worked together closely and developed a “risk management approach to identify ways to enhance the safe transportation of hazardous materials tank cars, including (1) Tank car design, manufacture, and requalification, (2) railroad operational issues such as human factors, track conditions and maintenance, wayside hazard detectors, signals and train control systems, and (3) improved planning and training for emergency response ” (73 Fed. Reg. at 17819)

This rulemaking is merely one in a long history of rulemakings designed to improve the safety and security of rail transportation of hazardous materials, and notably of TIH materials. The rulemaking and its predecessors are and were necessary because:

Hazardous materials are essential to the economy of the United States and to the well being of its people. These materials are used in water purification [chlorine] farming [anhydrous ammonia] manufacturing, and other industrial applications. Railroads carry over 1.7 million shipments of hazardous materials annually including millions of tons of explosive, poisonous, corrosive, flammable, and radioactive materials. The need for hazardous materials to support essential services means that the transportation of highly hazardous materials is unavoidable. (73 Fed. Reg. at 17819)

Almost simultaneously with the tank car rulemaking, PHMSA and FRA issued on April 16, 2008, an Interim Final Rule and Notice of Proposed Rulemaking entitled *Hazardous Materials Enhancing Rail Transportation and Safety and Security for Hazardous Materials Shipments; Railroad Safety Enforcement Procedures, Interim Final Rule and Proposed Rule* (73 Fed. Reg. 20752). Here, as in the tank car proposed rule,

¹ Chlorine and anhydrous ammonia are shipped in pressurized tank cars, as are all other TIH materials

the interim final rule and notice are based upon the fact that hazardous materials, including TIH materials such as chlorine, “are essential to the economy of the United States and the well being of its people.” (73 Fed. Reg. 20752)

The latest interim final rule and notice also recite in detail the various memoranda of understanding among PHMSA, FRA and the Transportation Security Administration of the Department of Homeland Security (“TSA”). In fact, the hazardous materials regulations of the Department of Transportation coupled with those of the Department of Homeland Security constitute a comprehensive body of safety and security regulations that are entirely premised on the need for such hazardous materials and the need for those materials to move by rail under the regulatory jurisdiction of DOT in matters related to safety. In addition, the primary jurisdiction of the DOT and not the ICC or the STB in matters related to safety remains intact following the passage of the ICC Termination Act. *Tyrrell v Norfolk S Ry Co*, 248 F.3d 517, 523 (6th Cir. 2001). See also, *Boston and Maine Corp v Surface Transp Bd*, 364 F.3d 318, 321 (DC Cir. 2004) (“the Board properly deferred to the expertise and jurisdiction of the FRA over matters relating to safety.”)

B. For More Than A Century Chlorine And Other TIH Materials Have Moved By Rail And The Interstate Commerce Commission And The Courts Have Consistently Held That the Common Carrier Obligation Requires Railroads To Accept Those Materials For Transport.

The oft cited cases of *Akron, C & Y R Co v I C C*, 611 F.2d 1162 (6th Cir. 1979), and *Consolidated Rail Corp v I.C.C.*, 646 F.2d 642 (D.C. Cir. 1981), both stand for the proposition that a railroad may not refuse to accept for transportation a hazardous material when the safety and security of such transportation is regulated by federal agencies, and both involved the transportation of irradiated fuel elements and radioactive

waste. Both cases noted that the transportation of these nuclear materials was a new technology, and the dangers of such transportation were not fully known. However, the Conrail Senior Vice President for Operations did testify before the Interstate Commerce Commission that "In the event of an accident [involving radioactive materials in rail transit,] the scope and extent of the consequences, expense and damages that could result would be far greater than those involved in transporting any other type of freight "

Consolidated Rail Corp v. I C C , at 644, fn 4 (bracketed material in the court's opinion). Notwithstanding the fact that nuclear waste transportation was a new, and highly dangerous enterprise, both the I C C. and the reviewing court held that not only must the railroads carry these materials, but they could not impose special train service requirements beyond those required by DOT and the Nuclear Regulatory Commission.

While there are marked similarities between the efforts by the railroads to avoid their common carrier obligation in the transport of nuclear wastes and TIH materials, there are also marked differences. Most prominently, while the movement of nuclear waste is a rather new development, the rail movement of chlorine started early in the last century. The only change in the rail movement of chlorine is that tank car and railroad technology advances have led to a far safer chlorine transportation environment. Certainly, the Congress is and was well aware of the movement of chlorine and has enacted and reenacted the common carrier obligation and the Federal HazMat Law with a clear understanding of not only the dangers of chlorine transportation but also the vital nature of the product. That being the case, it follows *a fortiori*, that Congress and the agencies having the jurisdiction to regulate the safety and security of rail transport of TIH materials have determined that such transport is reasonable and therefore any request for

such transport must be reasonable as well. The Board must here come to the same conclusion

The common carrier obligation was not changed by the passage of the Staggers Act and the ability of railroads to enter into contracts. In *Classification Ratings of Chemicals, Conrail, April 30, 1986*, 3 I.C.C. 331 (1986), the ICC held, citing *Akron, supra*, “[o]nce a reasonable request for transportation of these chemicals [TIH materials] is made, Conrail has a common carrier obligation to transport them. It necessarily follows that Conrail’s attempt to unilaterally excuse itself from this requirement circumvents section 10505. For the same reasons, there is no merit to Conrail’s argument that it can relieve itself of its common carrier obligation with respect to the commodities involved because it is unwilling in appropriate cases to enter into contracts under 49 U.S.C. § 10713.” Nor was it changed by the ICC Termination Act of 1995. When discussing the reenacted language of 49 U.S.C., the Conference Committee Report stated: “The Conference provision modifies the House provision to clarify the obligation of the carrier to make common carrier rates and service terms available to any person on request.” H.R. Report 104-422, 104 Cong. 1st Sess. 183 (1995). Since this reenactment of the common carrier obligation was made with full knowledge of the unbroken line of ICC and court cases prohibiting railroads from refusing to accept for transportation nuclear wastes and TIH materials, it must be considered a Congressional affirmation of those consistent interpretations of the common carrier obligation. See, *Lorillard v Pons*, 434 U.S. 575, 580-1 (1978).

C. The Railroads Have Failed To Demonstrate That They Face “Ruinous Liability” In The Movement Of TIH Materials By Rail That Is Any Greater Than the “Ruinous Liability” Faced By Many Other Companies Operating Today.

As noted in the Board’s Notice, the railroads continue to allege that the transportation of TIH materials subjects them to ruinous liability in the event of an accident. This, of course, is the same claim made by the railroads when they sought to avoid moving nuclear waste. In fact, as noted above, according to a Conrail Vice President, nuclear waste was more dangerous and exposed the railroads to greater liability than any other commodity. Unlike the nuclear waste cases, however, the railroads here have failed to introduce any evidence whatever as to the nature and scope of their alleged potential ruinous liability.

At the outset, it must be noted that the alleged ruinous liability faced by the railroads is in reality no different than the potential liability faced by a host of other industries, including: oil companies moving gasoline trucks through major urban centers, trucking companies moving explosives, flammables and TIH materials through urban centers; barge lines moving on the inland waterways carrying the same products, airlines flying planes near urban centers; and chemical companies making the necessary, but dangerous products upon which modern life depends. All these industries are regulated in one way or another by federal agencies such as the Environmental Protection Agency, Department of Transportation, Occupational Safety and Health Administration, the Coast Guard and the Department of Homeland Security.

In all respects the liability faced by the above industries is the same as that faced by the railroads with one significant difference. Those industries voluntarily handle dangerous materials or conduct dangerous operation in response to competitive

conditions, while, in some circumstances, the railroads are compelled by their common carrier obligation to carry products they *might* choose not to carry for business reasons. But is this obligation unfair? No federal agency worries if any of the companies in any of these industries is revenue adequate. No federal agency overrules the wishes of the Department of Justice and permits mergers that greatly reduce competition. No federal agency jealously protects the franchise monopoly position of each of the dwindling number of major companies in any industry; none that is save the railroad industry.

The oil industry, the chemical industry, the airline industry, the trucking industry and the railroad industry are all vital parts of the Nation's economy and no one would suggest that they do not need to be fostered, promoted and even protected. But that is not to say that each company operating in each industry or the respective stockholders of each company deserves some special protection. Stockholders make their investments with a full understanding of the risks and rewards attendant to each and every investment. Those choosing to invest in railroads do so with a complete understanding of the common carrier obligation and the railroads, as they are required to do by law, alert potential investors in their SEC filings of the risks that come with the common carrier obligation. But in reality, the risks faced by the railroads are no greater than those routinely faced by other companies that are also required to disclose those risks to potential investors.

D. Contrary to the General Non-Specific Allegations Made By The Railroads, Their Casualty and Insurance Costs Have Declined Dramatically in Recent Years And There Is No Indication That The Railroads Have Insufficient Insurance To Cover Their TIH Risks.

The attached testimony of Thomas O'Connor of Snively, King, Majoros, O'Connor & Lee, Inc., appended hereto as Exhibit 1, refutes and disproves the allegations of spiraling casualty and insurance costs. As can be seen from Exhibit 1, page

4, line 16, the total casualty and insurance costs for the five U.S. Class I railroads has dropped from \$1.233 billion in 2003 to \$782 million in 2007, a decline of \$451 million or 37 percent. This drop occurred notwithstanding the fatal collisions and derailments at Macdona, Texas in 2004 and Graniteville, South Carolina in early 2005.

Exhibit 1, page 4, lines 1 and 13 show that following the Macdona collision the casualty and insurance costs of BNSF jumped from \$243 million in 2003 to \$532 million in 2004 and of UP from \$343 million in 2003 to \$615 million in 2004. These same lines also demonstrate that the casualty and insurance costs quickly returned to normal and in 2005 were lower than for 2003 for both the BNSF and the UP.

Exhibit 1, page 4, line 10 shows a similar pattern for NS following the Graniteville collision and derailment. In 2003, NS had casualty and insurance costs of \$156 million, and in 2004 those costs dropped to \$129 million. Following Graniteville, the costs jumped to \$202 million in 2005 and declined to \$178 million in 2006. By 2007, the casualty and insurance costs for NS had returned to a level of \$154 million, lower than the 2003 costs. CSX, without any notorious incidents during the period, saw its casualty and insurance costs decline steadily from \$459 million in 2003 to \$114 million in 2007. (Exhibit 1, page 4, line 4)

While these casualty and insurance costs may reflect a financial impact from the Macdona and Graniteville collisions, they certainly do not suggest anything like ruinous liability in situations where fatalities were caused by railroad negligence, or as was determined by the U.S. Department of Justice in these cases, gross negligence.

It must be presumed that the officers and directors of the railroads are adequately protecting their shareholders by providing sufficient insurance to cover the projected

“ruinous liability” that they have so often discussed before this Board, before Congress and in their filings with the SEC. To do otherwise would be to recklessly disregard their fiduciary duties to those shareholders. Accordingly, with the cost of casualty and insurance declining while revenues and profits are increasing, it is totally disingenuous for the railroads to come before the Board and claim that some nightmare scenario will imperil the rail system of the United States without giving the slightest concrete indication how that nightmare scenario might arise even with that particular railroad being grossly negligent or wanton or reckless.²

E. A Price-Anderson Insurance Pooling And Safety Enhancing Mechanism Could Be Of Value But It Would Have To Be Created By Legislation Enacted By Congress And Require That The Railroads Provide All Necessary Insurance And Improve Their Safety Performance.

It goes without saying that the Price-Anderson Act is just that, an Act of Congress, and it be would solely within the province of Congress to pass such an Act and create such a mechanism in the rail industry.³ However, to the extent that a Price-Anderson mechanism could be put in place by the Congress, it would require that the railroads make two substantial commitments. First, since Price-Anderson requires the nuclear power licensees, not their customers or others to pay for all insurance obtained, they would have to create an insurance pooling mechanism where they could share in the premiums of the pooled insurance. This would create the necessary incentives for the safe operations that the Price-Anderson imposes. Second, they should be required to

² See for example *In re New Orleans Train Car Leakage Fire Litigation*, 795 So 2d 364, (La App 4 Cir 2001) wherein CSX was held to be wanton or reckless in failing to inspect a leaking butadiene tank car before it caught on fire, and ordered to pay in excess of \$2 billion in compensatory and punitive damages. Butadiene is not a TIH. The \$2 billion plus verdict must be considered a nightmare scenario, and yet CSX continues in business with stock prices well above those of 1987 when the incident occurred and well above those of 2001 when the verdict was affirmed.

³ With respect to the Price-Anderson Act and how it works, the Institute hereby adopts the testimony of the Edison Electric Institute filed herein.

create an independent watchdog group such as the Institute of Nuclear Power Operations ("INPO") which independent of the Nuclear Regulatory Commission ("NRC") effectively and aggressively polices the activities of those licensees in the insurance pool. Such a railroad watchdog group could be of the same assistance to the DOT as INPO is to the NRC.

The Institute and many other shippers and shipper groups would likely support such legislation providing, of course, the same safety and security incentives are imposed on the railroads as are imposed on the nuclear power licensees through railroad funded insurance provisions similar to those of Price-Anderson, and provided that an independent watchdog group would be created.

F. There Is No Credible Evidence That Railroads Incur Extra Costs For Moving TIH Materials Or That They Do Not Recover All Their Costs Associated With Those Movements.

To the extent that the railroads contend that they incur additional costs for the movement of TIH materials, and they are unable to recover those additional costs through their normal pricing practices, it is incumbent upon them to demonstrate those costs and why they cannot recover them. At the previous Ex Parte 677 hearings, a witness for the Norfolk Southern when asked about their rates covering their costs on TIH candidly admitted what chlorine shippers have known for a generation: railroads do not price on a cost recovery basis but on a what the market will bear basis. This has led to chlorine rates that are dramatically higher than rates for other commodities.

G. The Board Has No Authority To Invade Or Preempt The Tort Law Of The Several States By Allowing Railroads To Exculpate Themselves From Liability Or To Demand Indemnification From Others For Their Negligence, Gross Negligence Or Wanton Or Reckless Misconduct And Any Such Tariff Or Contract Provision Would Be Void As Against Public Policy.

At the April 25, 2008, hearings in Docket Ex Parte 677, a question arose as to whether the Board could authorize a railroad to require a shipper to indemnify the railroad for its own negligence or gross negligence as a condition of accepting TIH materials for transportation. While that precise question is not posed by the Notice in this proceeding, it does seem to be lurking, and the Institute will answer it. The answer is a resounding no.

Questions of indemnification and exculpation for negligent or grossly negligent conduct are matters that arise under state tort law. Even in federal courts, those courts are required to apply the law of the state in which the case arose when deciding questions of negligence or gross negligence. *Erie R. Co v Tompkins*, 304 U.S. 64 (1938).⁴ For the Board to assert any jurisdiction in the area of state common or statutory law governing negligence or gross negligence it must find that Congress gave it authority to preempt state tort law by enacting 49 U.S.C. § 10501(b) of the ICCTA. No such finding can be made.

The law regarding preemption of state tort law with respect to rail operations was set forth in the leading case of *CSX Transp v Easterwood*, 507 U.S. 658 (1993). Here the Supreme Court quoted from an earlier decision stating the well-established rule that a federal statute pertaining to a subject traditionally governed by state law will be reluctant to find preemption unless it is “the clear and manifest purpose of Congress” (*Easterwood*

⁴ As will be discussed below, the exception to this rule is where there is no state common law involved as in cases in Admiralty such as *Bisso v Inland Waterways Corp* 349 U.S. 85, (1955)

at 507 U.S. 664 quoting from *Rice v. Santa Fe Elevator Corp.* 331 U.S. 218, 230)

Looking at the plain language of Section 434 of the Federal Railroad Safety Act of 1970 (“FRSA” 45 U.S.C. § 434) the Court held that FRSA did specifically preempt state tort law in matters of railroad safety when the Secretary of Transportation had issued regulations that covered “the same subject matter as Georgia negligence law pertaining to the maintenance of, and the operation of trains at, grade crossings.” *Easterwood*, at 664.

The preempted issue in *Easterwood* involved how fast a train could be moving at a grade crossing. The DOT rules provided for a certain speed at the crossing in question and the plaintiff sought to have Georgia tort law hold that CSX was negligent for operating its train at or below that speed. Under Article VI, Clause 2 of the U.S. Constitution, the state law claim had to give way. The key to the case, however, was the very specific language of the FRSA and the plain intent of Congress to preempt any state statute or common law rule that would conflict with the federal railroad safety law.

No one could seriously contend that the Board would have jurisdiction to hear a suit brought by or against a railroad for negligence based on the language of 49 U.S.C. § 10501(b). Tort actions do not constitute the kind of economic regulation of “rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers...and construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching, or side tracks, or facilities” so carefully described in that section. Further, the Conference Report accompanying the ICCTA specifically points out that the Congress had no intention of preempting the general laws of the various states. H.R. Report 104-422, 104th Cong., 1st Sess., 167 (1995). State tort law subsumes the appropriateness and effect of any

indemnification provision entered into by parties to any contract including rail contracts whether by tariff or by exempted contracts. The Board therefore has no authority to intrude into that state domain. In any case, if the Board were to determine that a railroad could publish an indemnification or exculpatory provision in a tariff, or demand such a clause from a shipper as a condition of carriage by contract, such a holding would have no real impact since the effect of any such provision would necessarily be determined by the state or federal court hearing the negligence or gross negligence case at issue, and there is substantial precedent for voiding indemnification or exculpatory clauses in circumstances as those that exist between a railroad and a shipper and between a railroad and the public.

For an exculpatory or indemnification clause in a contract to be valid, each party must be a free bargaining agent. *Valhal Corp v Sullivan Associates, Inc* , 44 F.3d 195 (3d Cir. 1995) (applying Pennsylvania law). If the parties to an exculpatory or indemnification agreement do not stand on footing of equality, so that one is compelled to submit to a provision relieving the other from liability for future negligence, the provision is invalid. *Baltimore & O.S.W. Ry v Voigt*, 176 U.S. (1900); *Del Raso v U.S.* , 244 F.3d 567 (7th Cir. 2001) (applying North Carolina law); *Kansas City Power & Light Co v United Telephone Co. of Kan.* , 458 F.2d 177 (10th Cir. 1972)(applying Kansas law).

When federal tort law does apply in cases such as admiralty, the Supreme Court has voided exculpatory or indemnification provisions in cases involving transportation entities such as tow boat operators. In *Bisso v Inland Waterways Corp* , 349 U.S. 85 (1955), the Court held that under federal admiralty law towage companies should not be

allowed to relieve themselves of liability for negligence in the performance of their transportation activities. The Court explained the reasons for such a public policy:

The two main reasons for the creation and application of the rule have been (1) to discourage negligence by making wrongdoers pay damages, and (2) to protect those in need of goods or services from being overreached by others who have power to drive hard bargains....And both reasons apply with equal force whether tugs operate as common carriers [under the Interstate Commerce Act] or contract carriers 349 U.S. at 91.

A railroad publishing a “take it or leave it” tariff has complete bargaining power and a shipper seeking to move its TIH materials in order to stay in business has virtually none. In these circumstances, the Board could prohibit, under the common carrier obligation provisions of the ICCTA, the use of a tariff publication to require a shipper to indemnify a railroad for its own negligence, but it could not permit such a clause. Other federal agencies have recognized that sound public policy does not permit a transportation entity with unequal bargaining power to insist on indemnification as a condition of service. For example, the Federal Maritime Commission prohibits marine terminal operators, who have considerably less market power than do railroads, from publishing tariff schedules containing provisions that exculpate or relieve the marine terminal operator from its own negligence or imposes on others an obligation to indemnify the marine terminal operator for its own negligence. 46 C.F.R. § 525.2(a)(1)

In any case, as noted above in the discussion of Price-Anderson, there is every reason to require that the party controlling the transportation and able to prevent an incident should and must be the party responsible for doing so. Shifting liability away from the party able to prevent an incident involving the transportation of TIH materials

that are so essential to the Nation's economy and so essential to the welfare of its people would be irresponsible and unlawful

III. Conclusion

In view of the foregoing the Institute submits that a request for the rail transportation of chlorine and other TIH materials is a reasonable request and must be honored by the rail carrier involved without the imposition of conditions that are not fully justified by a complete record yet to be developed by the Board. The Institute also submits that the railroads face no greater liability for their negligent and grossly negligent misconduct than do countless other industries operating in the economy generally. Further, the casualty and insurance costs incurred by the railroads have steadily declined in recent years even with some serious incidents caused by railroad gross negligence. The Institute would consider supporting a railroad effort to install a Price-Anderson type of mechanism provided that it continued to impose upon the railroads the need to improve their respective safety records and pay for any additional insurance required. And finally, the Institute submits that the Board should not and legally cannot allow for or impose any obligation on the shippers of TIH materials to bear the costs or liabilities caused by the negligent or grossly negligent behavior of the railroads.

Respectfully submitted,



Paul M. Donovan
LAROE, WINN, MOERMAN &
DONOVAN
1250 Connecticut Ave N W , Suite 200
Washington, DC 20036

Counsel for the Chlorine Institute, Inc

Exhibit I

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 677 (Sub-No. 1)

**COMMON CARRIER OBLIGATION OF RAILROADS-
TRANSPORTATION OF HAZARDOUS MATERIALS**

Report Prepared by

Tom O'Connor

Snavely King Majoros O'Connor & Lee, Inc.

1111 14th St NW

Washington DC

My name is Tom O'Connor, I am Vice President of Snavely King Majoros O'Connor & Lee, Inc. Appendix A to this report summarizes my experience and qualifications

Counsel asked Snavely King Majoros O'Connor & Lee, Inc to analyze the casualties, insurance and related costs of the US Class I railroads

□ General Approach

The general approach we used in developing this report consists of analyzing the casualties, insurance and related costs, as reported by the railroads in the Annual Report R-1 ¹ We first reviewed the Uniform system of Accounts (USOA) initially established by the Interstate Commerce Commission (ICC) and subsequently adopted by the ICC's successor agency, The Surface Transportation Board (STB) ²

We determined that the relevant casualties, insurance and related costs were those shown in the following table Each operating expense account is referenced to the source schedule, line item and column within the Annual Report Form R-1 The costs are as reported on Annual Report R-1, on Schedule 410, Railway Operating Expenses

¹ Annual Report R-1 is required for every class I railroad operating within the United States The Reports are filed with the Surface Transportation Board

² The ICC Termination Act of 1995 abolished the Interstate Commerce Commission and replaced it with the Surface Transportation Board

□ Data

As indicated above, we drew the casualties, insurance and related costs directly from the data reported in the R-1 Annual Reports to the Surface Transportation Board (STB) for each of the years 2003 through 2007 by the following five Class I rail carriers BNSF, CSXT, KCS, NS, and UP

□ Methodology

We recorded the costs described above and shown in detail on the following Tables which present data on the five US Class I railroads both individually and as a group Based on that data we computed costs and the change in casualties, insurance and related costs during the 2003 through 2007 study period for each of the five carriers included in the study ³

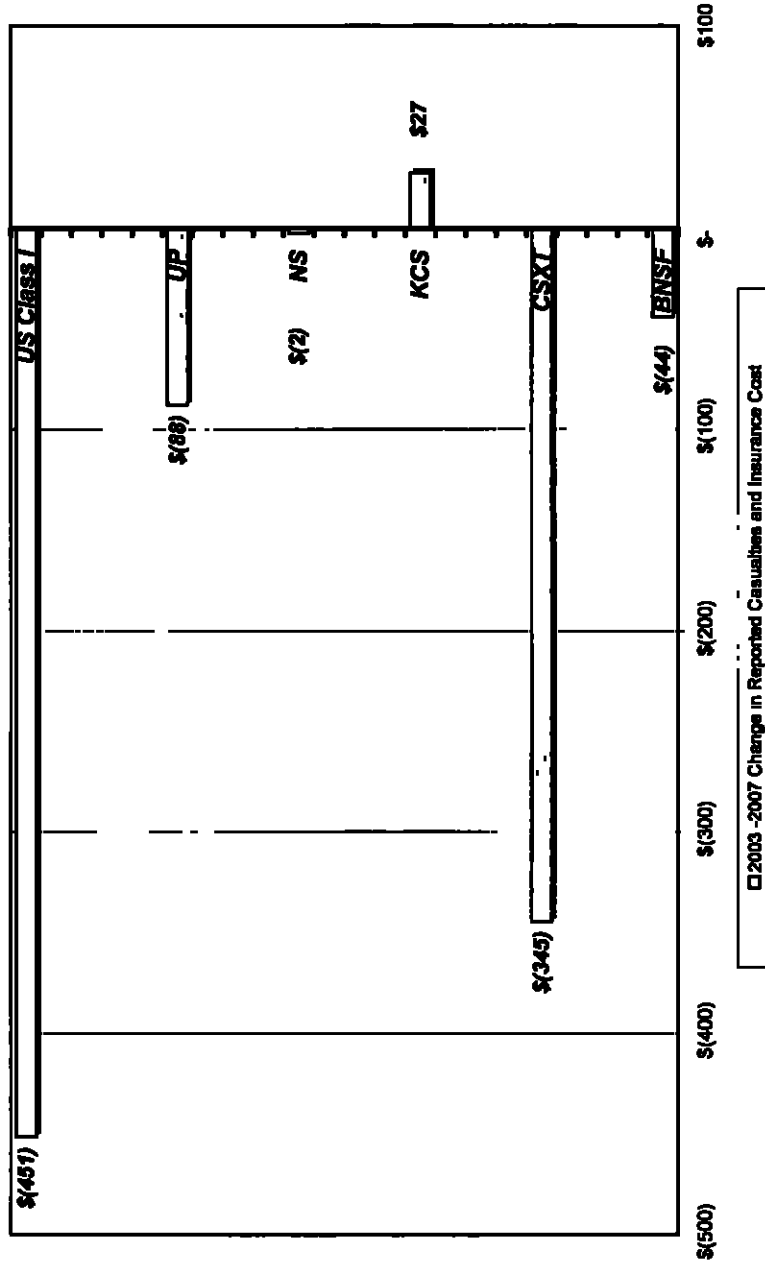
□ Findings

Based on this methodology, we reached our findings, as summarized in the following Charts and Tables, which present the underlying data, as reported by the five US Class I railroads included in the study Those findings are also presented in Charts I and II

³ We note that insurance is secured in several ways by the carriers, including self insurance of substantial deductibles (NS, CSXT and others), insurance provided by a parent corporation (UP) and insurance provided by wholly owned subsidiary corporations (BNSF and KCS)

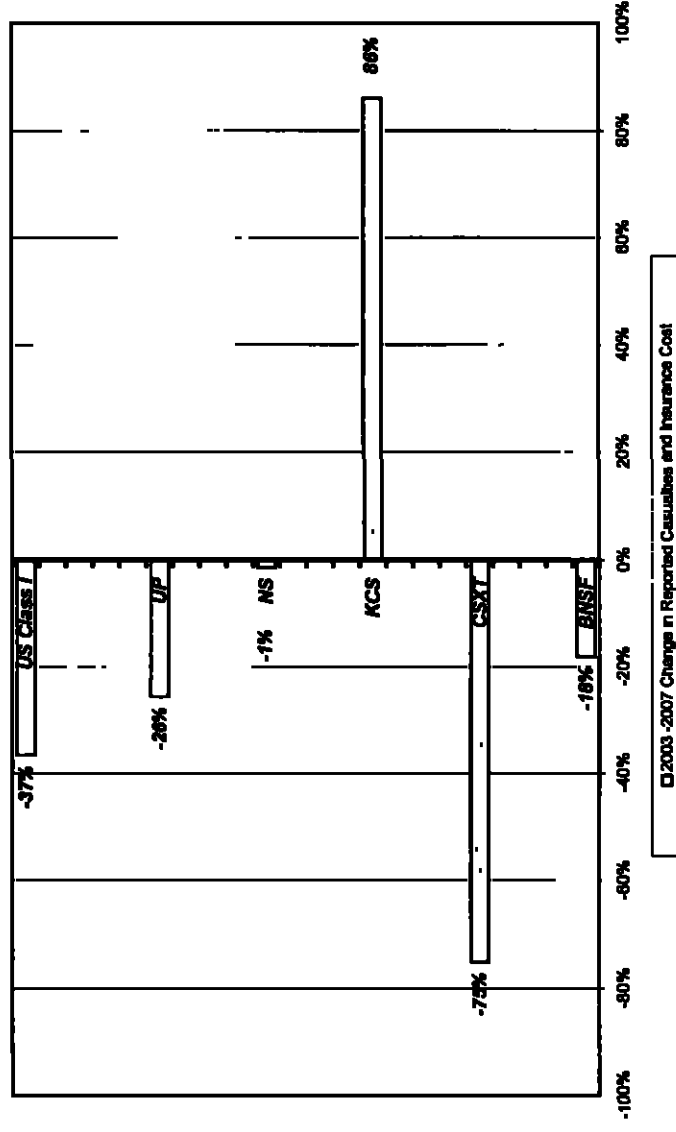
Analysis for US Class I Railroad Casualties, Insurance, and Loss and Damage Claims - 2003-2007											
Ln	RR	Class I Railroads Casualties, Insurance, and Loss and Damage	Source	2007	2006	2005	2004	2003	2003 to 2007 Percentage Change in reported costs	2003 to 2007 Percentage Change in Casualties and Insurance	2003 to 2007 Casualties and Insurance Change in Millions
(Dollars in Thousands)											
1	BNSF	Total Casualties & Insurance	BNSF Worksheet	\$ 198,902	\$ 199,717	\$ 215,599	\$ 531,862	\$ 242,924	-18%	-18%	\$ (44)
2		Total Loss & damage claims processing	BNSF Worksheet	\$ -	\$ -	\$ -	\$ -	\$ -			
3	BNSF	Total Loss & damage claims processing	BNSF Worksheet Ln 13 + Ln 14	\$ 198,902	\$ 199,717	\$ 215,599	\$ 531,862	\$ 242,924	-18%		
4	CSX	Total Casualties & Insurance	CSX Worksheet	\$ 114,451	\$ 190,669	\$ 142,595	\$ 226,139	\$ 459,998	-75%	-75%	\$ (345)
5		Total Loss & damage claims processing	CSX Worksheet	\$ 1,936	\$ 2,139	\$ 1,792	\$ 2,084	\$ 2,699	-28%		
6	CSX	Total Loss & damage claims processing	CSX Worksheet Ln 13 + Ln 14	\$ 116,366	\$ 192,807	\$ 144,387	\$ 228,223	\$ 461,897	-75%		
7	KCS	Total Casualties & Insurance	KCS Worksheet	\$ 59,457	\$ 23,434	\$ 75,351	\$ 20,899	\$ 31,958	86%	86%	\$ 27
8		Total Loss & damage claims processing	KCS Worksheet	\$ 322	\$ 312	\$ 321	\$ 371	\$ 293	10%		
9	KCS	Total Loss & damage claims processing	KCS Worksheet Ln 13 + Ln 14	\$ 59,779	\$ 23,746	\$ 75,672	\$ 21,270	\$ 32,251	85%		
10	NS	Total Casualties & Insurance	NS Worksheet	\$ 163,919	\$ 178,222	\$ 201,919	\$ 128,920	\$ 156,192	-1%	-1%	\$ (2)
11		Total Loss & damage claims processing	NS Worksheet	\$ 2,441	\$ 4,349	\$ 2,324	\$ 3,254	\$ 2,418	1%		
12	NS	Total Loss & damage claims processing	NS Worksheet Ln 13 + Ln 14	\$ 156,360	\$ 182,571	\$ 204,243	\$ 132,174	\$ 158,610	-1%		
13	UP	Total Casualties & Insurance	UP Worksheet	\$ 254,845	\$ 334,080	\$ 317,521	\$ 615,088	\$ 342,727	-26%	-26%	\$ (88)
14		Total Loss & damage claims processing	UP Worksheet	\$ 19,759	\$ 20,754	\$ 15,899	\$ 14,528	\$ 14,734	34%		
15	UP	Total Loss & damage claims processing	UP Worksheet Ln 13 + Ln 14	\$ 274,604	\$ 354,834	\$ 333,420	\$ 629,716	\$ 357,461	-23%		
16	US Class I	Total Casualties & Insurance	Ln 1+Ln 4+Ln 7+Ln 10+Ln 13	\$ 781,574	\$ 926,122	\$ 952,975	\$ 1,522,908	\$ 1,232,769	-37%	-37%	\$ (451)
17		Total Loss & damage claims processing	Ln 2+Ln 5+Ln 8+Ln 11+Ln 14	\$ 24,457	\$ 27,553	\$ 20,336	\$ 20,397	\$ 20,144	21%		
18	US Class I	Total Loss & damage claims processing	Summary Ln 16 + Ln 17	\$ 806,031	\$ 953,676	\$ 973,311	\$ 1,543,245	\$ 1,252,933	-36%		

Chart I: Change in Insurance and Related Costs 2003-2007
(Dollars in Millions)



As Chart I indicates, the five railroads taken as a group reported a significant decrease in casualties, insurance and related costs during the 2003 through 2007 period. Each of the individual railroads except for KCS also reported declines in these costs.

Chart II Percentage Change in Casualties and Insurance Costs 2003-2007



As Chart II indicates, in percentage terms, the five railroads taken as a group reported a significant decrease in casualties, insurance and related costs during the 2003 through 2007 period. While the KCS reported an increase, that increase only slightly diminished the group's overall decrease. Including the KCS changed the overall group from a 40 percent decrease to a 37 percent decrease.

The next series of tables present in detail the underlying data for the five US Class I railroads included in the study.

Analysis of BNSF Casualties, Insurance, and Loss and Damage Claims - 2003-2007 (Dollars in Thousands)									
Ln	BNSF Item	Source	2007	2006	2005	2004	2003	2003 to 2007 Percentage Change	2003 to 2007 Dollar Change
REPAIRS AND MAINTENANCE									
1	Casualties & insurance - turning	R-1, Sch 410, Ln 115, Col H	\$ 44,326	\$ 48,504	\$ 40,721	\$ 101,372	\$ 32,543	36%	\$ 11,783
2	Casualties & insurance - switching	R-1, Sch 410, Ln 116, Col H	\$ 4,189	\$ 4,584	\$ 11,585	\$ 9,590	\$ 2,155	94%	\$ 2,034
3	Casualties & insurance - other	R-1, Sch 410, Ln 117, Col H	\$ 11,361	\$ 12,453	\$ 10,493	\$ 26,029	\$ 8,137	40%	\$ 3,244
EQUIPMENT LOCOMOTIVES									
4	Other casualties & insurance	R-1, Sch 410, Ln 206, Col H	\$ 12,347	\$ 15,240	\$ 14,207	\$ 102,213	\$ 30,952	-60%	\$ (18,606)
FREIGHT CARS									
5	Other casualties & insurance	R-1, Sch 410, Ln 225, Col H	\$ 8,021	\$ 9,668	\$ 9,360	\$ 66,520	\$ 21,050	-62%	\$ (13,029)
OTHER EQUIPMENT									
6	Other casualties & insurance	R-1, Sch 410, Ln 310, Col H	\$ 739	\$ 891	\$ 842	\$ 7,530	\$ 1,178	-37%	\$ (439)
TRAIN OPERATIONS									
7	Other casualties & insurance	R-1, Sch 410, Ln 415, Col H	\$ 89,870	\$ 81,387	\$ 98,635	\$ 167,992	\$ 105,570	-15%	\$ (15,700)
YARD OPERATIONS									
8	Other casualties & insurance	R-1, Sch 410, Ln 431, Col H	\$ 20,100	\$ 17,566	\$ 21,716	\$ 32,654	\$ 27,002	26%	\$ (6,902)
SPECIALIZED SERVICE OPERATIONS									
9	Casualties & insurance	R-1, Sch 410, Ln 513, Col H	\$ 341	\$ 307	\$ 347	\$ 1,101	\$ 755	-55%	\$ (414)
ADMINISTRATIVE SUPPORT OPERATIONS									
10	Loss & damage claims processing	R-1, Sch 410, Ln 521, Col H	\$ -	\$ -	\$ -	\$ -	\$ -	-	\$ -
11	Casualties & insurance	R-1, Sch 410, Ln 523, Col H	\$ 7,166	\$ 6,697	\$ 7,934	\$ 14,529	\$ 9,044	-21%	\$ (1,875)
GENERAL AND ADMINISTRATIVE									
12	Casualties & insurance	R-1, Sch 410, Ln 612, Col H	\$ 422	\$ 2,228	\$ 1,769	\$ 3,732	\$ 4,538	-91%	\$ (4,115)
13	Total Casualties & Insurance	Ln 1+Ln 2+Ln 3+Ln 4+Ln 5+Ln 6+Ln 7+Ln 8+Ln 9+Ln 11+Ln 12	\$ 198,902	\$ 199,717	\$ 215,599	\$ 531,862	\$ 242,924	-18%	\$ (44,022)
14	Total Loss & damage claims processing	Ln 10	\$ -	\$ -	\$ -	\$ -	\$ -	-	\$ -
15	TOTAL CARRIER OPERATING EXPENSES	R-1, Sch 410, Ln 620, Col H	\$ 7,052,511	\$ 7,353,818	\$ 6,805,305	\$ 5,814,294	\$ 95,609,278	26%	\$ 1,443,233
16	Casualties & Insurance as percent of Total Op Exp	Ln 13/Ln 15	28%	27%	33%	91%	43%	-35%	

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Analysis of CSXT Casualties, Insurance, and Loss and Damage Claims - 2003-2007 (Dollars in Thousands)									
Ln	CSXT Item	Source	2007	2006	2005	2004	2003	2003 to 2007 Percentage Change	2003 to 2007 Dollar Change
REPAIRS AND MAINTENANCE									
1	Casualties & insurance - running	R-1, Sch 410, Ln 115, Col H	\$ 9,934	\$ 33,393	\$ 25,048	\$ 36,416	\$ 81,681	-88%	\$ (71,747)
2	Casualties & insurance - switching	R-1, Sch 410, Ln 116, Col H	\$ 4,575	\$ 4,101	\$ 2,408	\$ -	\$ -	-55%	\$ (4,575)
3	Casualties & insurance - other	R-1, Sch 410, Ln 117, Col H	\$ 2,287	\$ 2,061	\$ 1,204	\$ 5,801	\$ 5,083	-17%	\$ (2,796)
EQUIPMENT LOCOMOTIVES									
4	Other casualties & insurance	R-1, Sch 410, Ln 206, Col H	\$ 6,439	\$ 14,753	\$ 12,237	\$ 38,109	\$ 78,355	-92%	\$ (71,916)
FREIGHT CARS									
5	Other casualties & insurance	R-1, Sch 410, Ln 226, Col H	\$ 17,873	\$ 22,554	\$ 19,392	\$ 52,066	\$ 95,894	-81%	\$ (78,021)
OTHER EQUIPMENT									
6	Other casualties & insurance	R-1, Sch 410, Ln 310, Col H	\$ 2,287	\$ 2,061	\$ 1,204	\$ 1,067	\$ 988	136%	\$ 1,319
TRAIN OPERATIONS									
7	Other casualties & insurance	R-1, Sch 410, Ln 415, Col H	\$ 39,503	\$ 48,995	\$ 35,192	\$ 45,955	\$ 101,633	-61%	\$ (62,337)
YARD OPERATIONS									
8	Other casualties & insurance	R-1, Sch 410, Ln 431, Col H	\$ 17,495	\$ 46,202	\$ 31,769	\$ 43,525	\$ 92,956	-81%	\$ (75,501)
SPECIALIZED SERVICE OPERATIONS									
9	Casualties & insurance	R-1, Sch 410, Ln 513, Col H	\$ -	\$ -	\$ -	\$ -	\$ -	-	\$ -
ADMINISTRATIVE SUPPORT OPERATIONS									
10	Loss & damage claims processing	R-1, Sch 410, Ln 521, Col H	\$ 1,935	\$ 2,138	\$ 1,792	\$ 2,084	\$ 2,699	-28%	\$ -
11	Casualties & insurance	R-1, Sch 410, Ln 523, Col H	\$ 466	\$ 2,663	\$ 3,234	\$ -	\$ -	-	\$ 466
GENERAL AND ADMINISTRATIVE									
12	Casualties & insurance	R-1, Sch 410, Ln 612, Col H	\$ 13,592	\$ 13,916	\$ 10,907	\$ 2,400	\$ 2,178	524%	\$ 11,414
TOTAL CASUALTIES & INSURANCE									
13	Total Casualties & Insurance	Ln 1+Ln 2+Ln 3+Ln 4+Ln 5+Ln 6+Ln 7+Ln 8+Ln 9+Ln 10+Ln 11+Ln 12	\$ 114,451	\$ 190,689	\$ 142,595	\$ 226,139	\$ 458,988	-75%	\$ (344,537)
14	Total Loss & damage claims processing	Ln 10	\$ 1,935	\$ 2,138	\$ 1,792	\$ 2,084	\$ 2,699	-	\$ -
15	TOTAL CARRIER OPERATING EXPENSES	R-1, Sch 410, Ln 620, Col H	\$ 7,353,818	\$ 7,006,252	\$ 6,615,752	\$ 6,518,444	\$ 9,284,184	17%	\$ 1,069,634
16	Casualties & Insurance as percent of Total Op Exp	Ln 13/Ln 15	16%	27%	22%	35%	73%	-79%	

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Analysis of KCS Casualties, Insurance and Loss and Damage Claims - 2003-2007									
Ln	KCS Item	Source	2007	2005	2004	2003	2003 to 2007 Percentage Change	2003 to 2007 Dollar Change	
REPAIRS AND MAINTENANCE									
1	Casualties & insurance - running	R-1, Sch 410, Ln 115, Col H	\$ 1,198	\$ 3,929	\$ 4,095	\$ 3,030	21%	\$ 990	\$ 208
2	Casualties & insurance - switching	R-1, Sch 410, Ln 116, Col H	\$ -	\$ -	\$ -	\$ -	-	\$ -	\$ -
3	Casualties & insurance - other	R-1, Sch 410, Ln 117, Col H	\$ 34	\$ (1,902)	\$ (470)	\$ 1	-	\$ -	\$ 34
EQUIPMENT LOCOMOTIVES									
4	Other casualties & insurance	R-1, Sch 410, Ln 205, Col H	\$ 3,919	\$ 3,260	\$ (905)	\$ (412)	-3092%	\$ (131)	\$ 4,050
FREIGHT CARS									
5	Other casualties & insurance	R-1, Sch 410, Ln 225, Col H	\$ 5,070	\$ (245)	\$ 5,753	\$ 4,466	136%	\$ 2,127	\$ 2,943
OTHER EQUIPMENT									
6	Other casualties & insurance	R-1, Sch 410, Ln 310, Col H	\$ -	\$ -	\$ -	\$ 398	-100%	\$ -	\$ (398)
TRAIN OPERATIONS									
7	Other casualties & insurance	R-1, Sch 410, Ln 415, Col H	\$ 24,241	\$ 3,160	\$ 55,043	\$ 4,746	18%	\$ 20,566	\$ 3,675
YARD OPERATIONS									
8	Other casualties & insurance	R-1, Sch 410, Ln 431, Col H	\$ 63	\$ 13	\$ 26	\$ -	-	\$ -	\$ 63
SPECIALIZED SERVICE OPERATIONS									
9	Casualties & insurance	R-1, Sch 410, Ln 513, Col H	\$ -	\$ -	\$ -	\$ -	-	\$ -	\$ -
ADMINISTRATIVE SUPPORT OPERATIONS									
10	Loss & damage claims processing	R-1, Sch 410, Ln 521, Col H	\$ 322	\$ 312	\$ 321	\$ 371	10%	\$ 293	\$ -
11	Casualties & insurance	R-1, Sch 410, Ln 523, Col H	\$ -	\$ -	\$ -	\$ -	-	\$ -	\$ -
GENERAL AND ADMINISTRATIVE									
12	Casualties & insurance	R-1, Sch 410, Ln 612, Col H	\$ 24,932	\$ 15,220	\$ 11,819	\$ 9,048	211%	\$ 8,008	\$ 16,924
TOTAL CARRIER OPERATING EXPENSES									
13	Total Casualties & Insurance	Ln 1+Ln 2+Ln 3+Ln 4+Ln 5+Ln 6+Ln 7+Ln 8+Ln 9+Ln 11+Ln 12	\$ 69,457	\$ 23,434	\$ 75,361	\$ 20,899	86%	\$ 31,958	\$ 27,499
14	Total Loss & damage claims processing	Ln 10	\$ 322	\$ 312	\$ 321	\$ 371	-	\$ 293	\$ -
15	TOTAL CARRIER OPERATING EXPENSES	R-1, Sch 410, Ln 620, Col H	\$ 70,390	\$ 72,947	\$ 73,543	\$ 526,774	49%	\$ 517,367	\$ 253,033
16	Casualties & insurance as percent of Total Op Exp	Ln 13/Ln 15	7.7%	3.2%	10.2%	4.0%	25%	6.2%	-

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Analysis of NS Casualties: Insurance, and Loss and Damage Claims - 2003-2007 (Dollars in Thousands)									
Ln	NS Casualty Item	Source	2007	2006	2005	2004	2003	2003 to 2007 Percentage Change	2003 to 2007 Dollar Change
REPAIRS AND MAINTENANCE									
1	Casualties & insurance - running	R-1, Sch 410, Ln 115, Col H	\$ 24,621	\$ 27,425	\$ 24,630	\$ 16,864	\$ 19,789	25%	\$ 5,092
2	Casualties & insurance - switching	R-1, Sch 410, Ln 116, Col H	\$ 1,479	\$ 1,614	\$ 1,681	\$ 1,185	\$ 1,430	3%	\$ 49
3	Casualties & insurance - other	R-1, Sch 410, Ln 117, Col H	\$ 5,218	\$ 4,471	\$ 5,594	\$ 4,033	\$ 4,812	8%	\$ 406
EQUIPMENT LOCOMOTIVES									
4	Other casualties & insurance	R-1, Sch 410, Ln 206, Col H	\$ 20,875	\$ 28,224	\$ 32,590	\$ 18,084	\$ 22,928	-9%	\$ (2,053)
FREIGHT CARS									
5	Other casualties & insurance	R-1, Sch 410, Ln 226, Col H	\$ 13,292	\$ 17,588	\$ 21,682	\$ 11,289	\$ 13,342	0%	\$ (60)
OTHER EQUIPMENT									
6	Other casualties & insurance	R-1, Sch 410, Ln 310, Col H	\$ 1,155	\$ 1,801	\$ 2,161	\$ 1,154	\$ 1,634	-28%	\$ (479)
TRAIN OPERATIONS									
7	Other casualties & insurance	R-1, Sch 410, Ln 415, Col H	\$ 56,908	\$ 62,941	\$ 75,857	\$ 54,848	\$ 59,321	-2%	\$ (1,413)
YARD OPERATIONS									
8	Other casualties & insurance	R-1, Sch 410, Ln 431, Col H	\$ 17,668	\$ 21,406	\$ 25,202	\$ 18,873	\$ 20,978	-15%	\$ (3,110)
SPECIALIZED SERVICE OPERATIONS									
9	Casualties & insurance	R-1, Sch 410, Ln 513, Col H	\$ 2,788	\$ 3,187	\$ 3,805	\$ 2,750	\$ 2,878	-3%	\$ (90)
ADMINISTRATIVE SUPPORT OPERATIONS									
10	Loss & damage claims processing	R-1, Sch 410, Ln 521, Col H	\$ 2,441	\$ 4,349	\$ 2,324	\$ 3,254	\$ 2,418	1%	\$ -
11	Casualties & insurance	R-1, Sch 410, Ln 523, Col H	\$ 2,095	\$ 2,485	\$ 3,534	\$ 2,996	\$ 3,728	-44%	\$ (1,533)
GENERAL AND ADMINISTRATIVE									
12	Casualties & insurance	R-1, Sch 410, Ln 612, Col H	\$ 7,420	\$ 6,980	\$ 5,183	\$ (3,146)	\$ 6,362	17%	\$ 1,088
TOTAL CARRIER OPERATING EXPENSES									
13	Total Casualties & Insurance	Ln 1+Ln 2+Ln 3+Ln 4+Ln 5+Ln 6+Ln 7+Ln 8+Ln 9+Ln 11+Ln 12	\$ 153,919	\$ 178,222	\$ 201,919	\$ 128,920	\$ 156,192	-1%	\$ (2,273)
14	Total Loss & damage claims processing	Ln 10	\$ 2,441	\$ 4,349	\$ 2,324	\$ 3,254	\$ 2,418	-	\$ -
15	TOTAL CARRIER OPERATING EXPENSES	R-1, Sch 410, Ln 620, Col H	\$ 7,062,511	\$ 7,353,818	\$ 6,805,305	\$ 5,814,294	\$ 6,809,278	26%	\$ 1,443,233
16	Casualties & Insurance as percent of Total Op Exp	Ln 13/Ln 15	22%	24%	31%	22%	28%	-22%	

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Analysis of Union Pacific Casualties, Insurance, and Loss and Damage Claims - 2003-2007										
(Dollars in Thousands)										
Ln	UP Item	Source	2007	2006	2005	2004	2003	2003 to 2007 Percentage Change	2003 to 2007 Dollar Change	
REPAIRS AND MAINTENANCE										
1	Casualties & insurance - running	R-1, Sch 410, Ln 115, Col H	\$ 15,131	\$ 23,337	\$ 21,520	\$ 60,559	\$ 30,295	-50%	\$ (15,164)	
2	Casualties & insurance - switching	R-1, Sch 410, Ln 116, Col H	\$ 3,920	\$ 6,035	\$ 5,568	\$ 13,899	\$ 6,953	-44%	\$ (3,033)	
3	Casualties & insurance - other	R-1, Sch 410, Ln 117, Col H	\$ 5,676	\$ 8,777	\$ 8,051	\$ 18,908	\$ 9,408	-40%	\$ (3,733)	
EQUIPMENT LOCOMOTIVES										
4	Other casualties & insurance	R-1, Sch 410, Ln 206, Col H	\$ 12,968	\$ 19,998	\$ 18,441	\$ 51,404	\$ 25,715	-50%	\$ (12,747)	
FREIGHT CARS										
5	Other casualties & insurance	R-1, Sch 410, Ln 225, Col H	\$ 43,528	\$ 41,950	\$ 44,808	\$ 72,502	\$ 47,037	-7%	\$ (3,509)	
OTHER EQUIPMENT										
6	Other casualties & insurance	R-1, Sch 410, Ln 310, Col H	\$ 206	\$ 321	\$ 283	\$ 1,103	\$ 552	-63%	\$ (345)	
TRAIN OPERATIONS										
7	Other casualties & insurance	R-1, Sch 410, Ln 415, Col H	\$ 89,093	\$ 136,395	\$ 125,861	\$ 255,117	\$ 127,977	-30%	\$ (38,884)	
YARD OPERATIONS										
8	Other casualties & insurance	R-1, Sch 410, Ln 431, Col H	\$ 19,794	\$ 30,404	\$ 28,052	\$ 60,339	\$ 30,185	-34%	\$ (10,391)	
SPECIALIZED SERVICE OPERATIONS										
9	Casualties & insurance	R-1, Sch 410, Ln 513, Col H	\$ 1,195	\$ 1,806	\$ 1,673	\$ 1,340	\$ 679	76%	\$ 516	
ADMINISTRATIVE SUPPORT OPERATIONS										
10	Loss & damage claims processing	R-1, Sch 410, Ln 521, Col H	\$ 19,759	\$ 20,754	\$ 15,898	\$ 14,528	\$ 14,734	34%	\$ (7,640)	
11	Casualties & insurance	R-1, Sch 410, Ln 523, Col H	\$ 8,734	\$ 13,361	\$ 12,378	\$ 32,640	\$ 16,374	-47%	\$ (7,640)	
GENERAL AND ADMINISTRATIVE										
12	Casualties & insurance	R-1, Sch 410, Ln 612, Col H	\$ 54,600	\$ 51,745	\$ 51,088	\$ 47,377	\$ 47,551	15%	\$ 7,049	
TOTAL CASUALTIES & INSURANCE										
13	Total Casualties & Insurance	Ln 1+Ln 2+Ln 3+Ln 4+Ln 5+Ln 6+Ln 7+Ln 8+Ln 9+Ln 10+Ln 11+Ln 12	\$ 254,845	\$ 334,080	\$ 317,521	\$ 615,088	\$ 342,727	-26%	\$ (67,862)	
TOTAL LOSS & DAMAGE CLAIMS PROCESSING										
14	Total Loss & damage claims processing	Ln 10	\$ 19,759	\$ 20,754	\$ 15,898	\$ 14,528	\$ 14,734	34%	\$ (7,640)	
TOTAL CARRIER OPERATING EXPENSES										
15	TOTAL CARRIER OPERATING EXPENSES	R-1, Sch 410, Ln 620, Col H	\$ 13,083,808	\$ 12,855,142	\$ 11,894,909	\$ 11,013,882	\$ 9,481,767	36%	\$ 3,601,841	
Casualties & Insurance as percent of Total Op Exp										
16	Casualties & Insurance as percent of Total Op Exp	Ln 13/Ln 15	19%	26%	27%	56%	36%	-46%		

□ Analysis

We examined first the data reported in the Annual Report R-1. We then reviewed the data in the reports the carriers filed with the Securities and Exchange Commission (SEC), specifically the 10Q and 10 K reports. We found nothing in those reports to the SEC which contradicted the data and findings drawn from the railroads' R-1 reports to the STB.

The life and health insurance costs discussed in some of the reports to the SEC are properly excluded from the casualties and insurance cost accounts we have included in this analysis.

We adopted 2003 as the base year for the study and continued the study through 2007, the most recent reported year.

□ Conclusions

Based on our analysis of the data and methodology described in this report we have reached preliminary conclusions as to casualties and insurance costs reported by the five US Class I carriers.

The reported data does not support a conclusion that rail transportation during the 2003 to 2007 study period has led to higher casualties and insurance costs. In fact the opposite result has occurred.

The overall costs of casualties and insurance, as reported by the five US Class I railroads, have decreased significantly during the 2003 to 2007 study period.

The overall casualties and insurance costs decreased by 40 percent before including KCS. Including the KCS, the total casualties and insurance costs for the five railroads decreased by 37 percent during the 2003 to 2007 study period.

Appendix A
Capabilities and Experience of
Tom O'Connor
Snavely King Majoros O'Connor & Lee
1111 14th St. NW
Washington DC
20005

This section sketches some of the highlights of Tom O'Connor's background and strengths, focusing on experience in the following areas

- ❑ Transportation Economics**
- ❑ Transportation Cost Methodologies**
- ❑ Computerized Analytical Systems for Rail, Truck and Barge**
- ❑ Network planning and design**
- ❑ Litigation**
- ❑ Arbitration and Mediation**
- ❑ Negotiations**
- ❑ Operations analysis**
- ❑ Analysis of transportation operations including mergers, acquisitions and divestitures**

The presentation of capabilities is developed in two principal parts

- ❑ Tom O'Connor's resume which covers the broader range of assignments**
- ❑ Tom O'Connor's litigation experience, including a brief summary of the cases in which he has testified**

In each of these, transportation economics and cost analysis is one of the prominent themes. Much of this experience centers on analytical methodologies, issues and related system design

Tom O'Connor is Vice-President of Snavely King Majoros O'Connor & Lee, Inc (Snavely King), an economic and management consulting company. He has been engaged in the business of economic analysis for more than thirty years.

Mr. O'Connor began his career as an economist with the Interstate Commerce Commission (now the Surface Transportation Board). He later served in economic consulting and management positions of increasing responsibility:

- **Manager of Local Rail Service Planning with the US Railway Association,**
- **Assistant Director of Costs and Economics with Conrail,**
- **Assistant Vice President of Economics- Association of American Railroads**
- **Vice President of DNS Associates and**
- **Vice President of Snavely King Majoros O'Connor & Lee, Inc**

Snavely King is an economic and management consulting company focusing on telecommunications and transportation.

Mr. O'Connor has provided testimony in a number of proceedings before courts and regulatory commissions in the United States and Canada including:

- **Interstate Commerce Commission,**
- **Surface Transportation Board,**
- **United States Railway Association,**
- **Regulatory Commission in New York**
- **Regulatory Commission in Indiana**
- **Regulatory Commission in Pennsylvania**
- **State Court in Indiana**
- **State Court in Montana,**
- **State Court in Virginia,**
- **Arbitration Panel in New York**
- **Mediation Panel in Massachusetts**
- **Mediation Panels in Washington DC**
- **Canadian Crown Commission**
- **US District Court for Eastern District of Virginia,**
- **US District Court for Arizona**

Tom O'Connor's practice centers on transportation with specific focus on negotiations and infrastructure issues including rationalization and redesign of the railroad infrastructure in the US as well as rebuilding of the railway infrastructure in Eastern Europe

Mr O'Connor's work in Eastern Europe focused on both transportation and telecommunications

Snavely King Majoros O'Connor & Lee, Inc., Washington, DC

- **Vice President (1988-Present)**

Mr O'Connor has more than thirty years experience in business and economic analysis His experience includes key and increasingly responsible management and policy positions with government agencies and private industry

Mr O'Connor has authored a series of guidelines on transportation negotiations and contracting and has conducted transportation negotiations and contracting seminars for a wide range of clients Mr O'Connor has also designed and helped lead transportation contract negotiations resulting in tens of millions in cost savings

Mr O'Connor has also appeared as an expert witness on highway transportation costs, in rail line abandonment cases and in highway transport and rail rate litigation, achieving millions of dollars in savings for the client He has served many clients as an expert advisor on the Rail cost Adjustment Factor (RCAF)

He has also created and managed numerous computerized management and regulatory systems to address complex problems and is a widely recognized expert on costing and economics He has appeared as an expert on various ICC-STB regulatory issues He also developed the path breaking and widely used economic analysis system in the US rail industry, the United States Railway Association Light Density Line Analysis system

He has also conducted analyses of tug and barge operations, both inland and off shore, for governmental and private sector clients

Mr O'Connor has conducted analyses for the Government of Canada used to shape policy for freight transportation He has also conducted studies for the

U S Government used to shape Freight and Passenger Transport Policy, including in depth analyses of Amtrak

For the Government of Bulgaria, in the Balkans, he developed the Master Plan for Management Information Systems, including telecom and computer facilities designed to operate, measure, manage and monitor both rail freight and rail passenger operations of the Bulgarian State Railways, in Bulgaria and the Balkan Peninsula

Mr O'Connor has analyzed more than 45 rail merger scenarios and cases He has provided expert testimony before state and federal courts and commissions in the U S and Canada on economic and policy issues He has also testified as an expert on computerized transportation analytical systems, rail operations, anti trust issues and transportation economics and costing Mr O'Connor has served as an impartial and expert monitor of data and processes at issue in litigation on transportation

Mr O'Connor has also conducted management audits, focused on identifying the cause and effect relationships underlying claimed cost incidence The management audits were directed toward testing the cost basis of claims asserted by major railroads

Mr O'Connor also has experience in telecoms spanning the period since 1995 During this period, on a succession of government and commercial projects, Mr O'Connor directed and participated in the review, design and operation of telecoms systems

He also designed and developed the business and operations plan for an Eastern European telecoms startup company, BDZCOM Mr O'Connor designed and presented the plan and conducted liaison with international commercial, banking and government interests in the United States and Europe

DNS Associates Inc., Washington, DC

- **Vice President (1982 - 1988)**

Mr O'Connor directed and participated in numerous projects including merger analyses, transportation infrastructure analyses, plant and network rationalization and feasibility studies

He designed and implemented mainframe and microcomputerized systems for analyzing rail, truck and barge logistics The computerized cost systems Mr O'Connor created gained widespread use throughout the United States and Canada

Mr O'Connor also advised the U S Rail Accounting Principles Board (RAPB) on the costing aspects of regulatory reform policies The RAPB mission included advising the ICC as to the inclusion of productivity in the RCAF

He provided expert testimony on coal rates, computerized data bases and cost systems and rail cost issues before the Interstate Commerce Commission

Association of American Railroads, Washington, DC

- **Assistant Vice President, Economics (1979 - 1982)**

Managing a large staff of professionals, Mr O'Connor designed and managed major economic analysis projects He helped formulate industry economic policy positions culminating in the Staggers Rail Act of 1980 He submitted expert testimony on behalf of the railroad industry in numerous cases before the Interstate Commerce Commission and state regulatory commissions He also appeared regularly in national forums on economic issues

Mr O'Connor directed the most significant computerized industry Costing System project in 40 years, URCS, the cost system now used by all major US railroads Mr O'Connor's staff was responsible for development of the Rail Cost Adjustment Factor (RCAF) He also conducted industry seminars on URCS and related economic issues

Mr O'Connor also testified before the Interstate Commerce Commission on the design and application of the pathbreaking URCS rail cost system since adopted by the Commission and the rail industry

He also directed development and installation of a commercial computerized economic and market analysis system now used by virtually all major US railroads

Consolidated Rail Corporation, PA

- **Assistant Director, Cost & Economics (1977 - 1979)**

Managing a staff of about 30 professionals, Mr O'Connor was responsible for all Conrail management and regulatory cost analyses in both freight and passenger areas He testified before the ICC on the development of line subsidy standards now widely used in the US railroad industry

He also finalized the design, installed and managed Contribution Simulator and Calculator (COSAC), a computerized internal management economic analysis system at Conrail The COSAC system uses specific management accounting data to develop economic costs COSAC replaced earlier systems and was used to guide virtually all transportation management decisions, including competitive market initiatives, consolidations, line abandonments and service discontinuance

Mr O'Connor also participated in cost allocation negotiations between Amtrak and Conrail on cost sharing of joint facilities on the North East corridor He initiated and directed profit maximization and plant rationalization programs He also designed and implemented computerization and improvement of a wide range of economic and cost analysis systems used to manage and turn around this multi-billion dollar corporation

R.L. Banks & Associates Inc., Washington, DC

- **Consultant (1976 - 1977)**

Mr O'Connor conducted and directed numerous transportation- related projects in the U S and Canada ranging from national logistics analyses to site-specific studies He specialized in costing systems and appeared as an expert witness on such systems in a precedent setting proceeding before a Canadian Crown Commission

U.S. Railway Association, Washington, DC

- **Manager, Local Rail Service Planning (1974 - 1976)**

In a project of unprecedented scope and historic impact, Mr O'Connor developed, computerized, and implemented the light density lines cost analysis system, which defined Conrail This system was used to reach asset disposition and line service decisions for thousands of miles of railroad He served as liaison with congressional staffs and shipper groups, as well as federal, state, and local governments, and planning agencies The system he created was a major element in the design and implementation of the streamlined Midwest-Northeast regional rail system Mr OConnor subsequently appeared as an expert witness to present and defend the operation of the USRA costing system

Interstate Commerce Commission,

- **Economist, Washington, DC (1973-1974)**

Mr O'Connor served as a staff economist and authored a report analyzing industry investment patterns and ICC regulatory policy, including ICC use of cost evidence

□ **Education**

- University of Massachusetts, Amherst, B A Economics
- University of Wisconsin, Graduate Course Work, Economics
- University of Delaware, Graduate Course Work, Business Management
- The American University, Graduate Course Work, Computer Science

□ **Professional Organizations**

- Transportation Research Board
 - Past Chairman of the Transportation Regulation Committee
- Transportation Research Forum
 - Past President of the Cost Analysis Chapter
- National Defense Transportation Association
 - Past Member of Board of Directors, National Capital Chapter

□ **Academic honors**

- Phi Kappa Phi academic honors society
- Phi Beta Kappa academic honors society

□ **Military**

- U S Army, Sergeant, Combat Engineers

□ **Security Clearance**

- Secret

Summary of Expert Testimony

Of

Tom O'Connor

Vice President

Snavelly King Majoros O'Connor & Lee, Inc

1111 14th St NW

Washington DC 20005

Tom O'Connor Testimony In Federal Regulatory Cases

- The comparative merits of the Interstate Commerce Commission's Uniform Rail Costing System (URCS) and Cost Center Accounting submitted to the ICC on behalf of the US Railroad industry in February 1980 in Docket No. 37203.**
- The economics and computer technology of the Light Density Line Methodology used to define Conrail, submitted to USRA before a special hearing in 1980.**
- Computerized transportation database design and use. Verified statement was submitted to ICC on behalf of the US Railroad industry in Nov 1980 in Ex Parte No. 385.**
- The comparative merits of two regulatory rail-costing systems, URCS and the predecessor rail costing system, Rail Form A, submitted to the ICC on behalf of the US Railroad industry in March 1981, in Ex Parte 399.**
- Testimony on the Preliminary 1979 Rail Cost Study as released by the ICC, calling for adopting and improving URCS. This was submitted to the ICC on behalf of the US Railroad industry in Docket No. 37203 in February 1982.**
- Rail costing using Rail Form a costs applied to service units generated by a computerized rail network model. This verified statement was submitted to the ICC on behalf of a shipper located in Nevada in July 1985 in ICC Docket Nos. 37809 and 37815S.**
- Rail costing, also using Rail Form A costs applied to service units generated by computerized network model. This verified statement was submitted to ICC on behalf of a shipper located in Nevada in November, 1986 in Docket No. 37809, 37815S.**
- Stand Alone Rail Costing, for use in rate reasonableness, using service units developed with a series of computerized network model. This verified statement was submitted to the ICC on behalf of the Association of American Railroads in September, 1988 in Docket No. 38239S**

- Rail merger conditions, developed using rail costs and a computerized network model. This verified statement was submitted to the ICC in March 1994 in Finance Docket No. 21215 (Sub. No. 5)**
- The effects of computerized methods on rail operations and costs. This verified statement was submitted to the ICC on behalf of Coletto Creek Utility in July 1994 in Docket No. 41242.**
- The cost of rail coal transportation using URCS costs and A Stand Alone Network. This verified statement was submitted to the ICC on behalf of West Texas Utilities in April 1995 in Docket No. 41191.**
- Further testimony on the cost of rail coal transportation using URCS costs and a Stand Alone Network. This verified statement was submitted to the ICC on behalf of West Texas Utilities in July 1995 in Docket No. 41191.**
- Oral Argument on the effects of the BN-SF merger on rail costs and service presented before the full Commission in August 1995 on behalf of Universal Forest Products in Finance Docket No. 32549.**
- The effects of the UP-SP merger on costs, infrastructure and operations. Verified statement was submitted to ICC on Behalf of Kansas City Southern Railroad in March 1996 in Finance Docket No. 32760.**
- Competitive truck transportation market. Joint Verified Statement with James Wells was submitted to Surface Transportation Board (STB) on behalf of TJ MAXX on June 22, 1998 in Docket No. 41192**
- The investment plans of UP-SP to remedy effects of the UP-SP merger. Verified statement was submitted to STB on Behalf of Kansas City Southern Railroad in June, 1998 in Finance Docket No. 32760 UP-SP Merger Oversight Proceeding**
- The Arkansas and Missouri Railroad Request For Discontinuance Waiver Filed on Behalf of Kansas City Southern Railroad. Verified statement was submitted to Surface Transportation Board (STB) in November 1998 in Finance Docket No. 32670.**

- **Further testimony on the competitive truck transportation market. Joint Verified Statement with James Wells was submitted to Surface Transportation Board (STB) on behalf of TJMAXX in January, 1999 in Docket No. 41192**
- **Rail Merger Guidelines to develop new and improved merger analysis processes. Verified statements were submitted to Surface Transportation Board (STB) on behalf of OxyChem, Oxy Vinyls, BASF and Williams Energy Services in May 2000 in Ex Parte 582.**
- **Reply Testimony on Rail Merger Guidelines to develop new and improved merger analysis processes. Reply Verified statements were submitted to Surface Transportation Board (STB) on behalf of OxyChem, Oxy Vinyls, BASF and Williams Energy Services in June 2000 in Ex Parte 582.**
- **Testimony on STB Rate Guidelines in small Shipment Cases. Verified statement was submitted to Surface Transportation Board (STB) on behalf of SK clients in STB Ex Parte 646 in June 2004.**
- **Oral Testimony on STB Rate Guidelines in small Shipment Cases. Oral Testimony was presented to the full Surface Transportation Board to Surface Transportation Board (STB) on behalf of SK clients in STB Ex Parte 646 in July 2004.**
- **Testimony on STB Stand Alone Costs focusing on alternatives. Comments submitted to Surface Transportation Board (STB) on behalf of SK in STB Ex Parte 657 in April 2005.**
- **Oral Testimony on STB Stand Alone Costs focusing on alternatives. Presented to Surface Transportation Board (STB) on behalf of SK in STB Ex Parte 657 in April 2005.**
- **Testimony on the first ever STB Small Shipment Rate Case. Comments submitted to Surface Transportation Board (STB) on behalf of BP Amoco in STB Docket NOR 42093 in May-June 2005. The case was resolved successfully through mediation.**

- **Testimony on the second STB Small Shipment Rate Case.** Comments submitted to Surface Transportation Board (STB) on behalf of Williams Olefins, L.L.P. before the STB in November 2006. The case was resolved successfully through mediation.

Tom O'Connor – State, Regional and Canadian Testimony

- **Expert testimony centering on the costs of providing transportation to Medicaid care recipients.** This testimony involved design and development of computerized costing models of highway transportation. The evidence was central to resolution of long standing issues. This evidence was developed and submitted on behalf of Medicaid transportation providers and was accepted by the Court in Marion Superior Court in the State of Indiana in Cause No. 49D01 9309 MI952 on November 21, 2005. Oral testimony was presented in October, 2005. The case was decided in favor of the client.
- **Expert antitrust testimony centering on the availability of construction materials.** This was submitted in an antitrust case and was filed on behalf of Solcon in Solcon Constructions adv. Asphalt Busters Case No. CIV 01 01269 PHX ROS, United States District Court for the District of Arizona. This evidence was developed and submitted in May 2003.
- **Expert testimony centering on commuter railroad operations and costs.** This testimony involved design and development of computerized costing models of commuter rail operations. The evidence was central to arbitration to resolve subsidy disputes between New York and Connecticut. This evidence was developed and submitted on behalf of Metro North Commuter Railroad in August 1996 with oral testimony presented in February 1997. The case was decided successfully in favor of the client.
- **Expert testimony centering on the effects of a series of explosions on transportation operations and costs.** This was submitted on behalf of Washington construction Company in a damages case filed by Burlington Northern Railroad in state court in Montana, First Judicial District Court, and Cause Number ADV 91-1885. The case went to a jury trial and was decided successfully in favor of the client in September 1993.

- **Expert antitrust testimony centering on computerized network models. This was submitted in an antitrust case filed on behalf of Geoplex in U.S. District Court for the Eastern District of Virginia, Geoplex Corporation v. CACI, Inc. Civil Action No. 89-610-A. This evidence was developed and submitted in November 1989.**
- **Expert testimony centering on transportation operations and costs. This was submitted on behalf of the Canadian provinces of Alberta, Manitoba and Saskatchewan before a Canadian Crown Commission in a series of hearings held in Winnipeg, Manitoba and Regina, Saskatchewan in 1976. This led to an historic change in Canadian transportation regulation.**
- **In addition to these cases Mr. O'Connor has also submitted testimony on rail costs and operations before State regulatory commissions in Indiana, Pennsylvania and New York.**