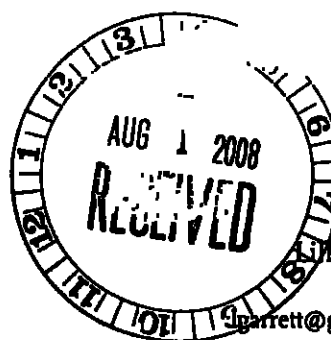


**GORDON
ARATA** MCCOLLAM DUPLANTIS
& EAGAN LLP



Lillianne Garrett
Paralegal
lgarrett@gordonarata.com

P O Box 81829 (Zip 70598-1829)
400 East Kaliste Saloom Road, Suite 4200
Lafayette, Louisiana 70508-8517
(337) 237-0132 Fax (337) 237-3451
www.gordonarata.com

223072

July 31, 2008

Ref: 5053-26541

Via FedEx

Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20024

ENTERED
Office of Proceedings
AUG - 4 2008
Pcn of
Public Record

Re: *Ashbro, Inc. v. Misuri Associates Limited Partnership, et al*

Dear Sir/Madam:

Enclosed for filing in connection with the referenced matter is an original and ten (10) copies of a Petition for Declaratory Order, Injunctive Relief, and Damages on behalf of Ashbro, Inc. Please file the original and return a date-stamped copy to us. I have enclosed a self-addressed FedEx envelope for your convenience.

Also enclosed is this firm's check in the amount of \$1,400.00 to cover the cost of filing.

With kind regards, I am,

Very truly yours,

Lillianne Garrett

FEE RECEIVED

AUG - 1 2008

Lillianne Garrett
Paralegal

FILED

AUG - 1 2008

Enclosures

**SURFACE
TRANSPORTATION BOARD**

**SURFACE
TRANSPORTATION BOARD**

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Secretary, Surface Transportation Board

July 31, 2008

Page 2

cc: (Via U.S. Mail):
Mr. David S. Kelly
Ms. Nicole M. Duarte
Mr. Samuel Bradley Rhorer
Mr. Joseph P. Brantley, IV
Ms. Vera K. Crumby-Nance
Mr. Donald L. Miers, Jr.
Mr. Weldon A. Frommeyer, Jr.
C T Corporation System
Illinois Central Railroad
Misuri Associates Limited Partnership
Adell Compounding, Inc.
Bercen, Inc.

223072



BEFORE THE SURFACE TRANSPORTATION BOARD

ASHBRO, INC., Petitioner

VERSUS

**MISURI ASSOCIATES LIMITED PARTNERSHIP, ADELL COMPOUNDING, INC.,
BERCEN, INC. and ILLINOIS CENTRAL RAILROAD COMPANY, Defendants**

DOCKET NO. 35171

PETITION OF ASHBRO, INC.

FOR DECLARATORY ORDER, INJUNCTIVE RELIEF, AND DAMAGES

Ashbro, Inc.
4529 Hessmer Avenue
Metairie, Louisiana 70002
PETITIONER

Misuri Associates Limited Partnership
30128 Eden Church Road
Denham Springs, Louisiana 70726

Adell Compounding, Inc.
30128 Eden Church Road
Denham Springs, Louisiana 70726

Bercen, Inc.
1381 Cranston Street
Cranston, RI 02920

Illinois Central Railroad
135 East Eleventh Place
Chicago, Illinois 60605

DEFENDANTS

FILED
AUG - 1 2008
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**SURFACE
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Office of Proceedings
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Public Record



BEFORE THE SURFACE TRANSPORTATION BOARD

ASHBRO, INC., Petitioner

VERSUS

**MISURI ASSOCIATES LIMITED PARTNERSHIP, ADELL COMPOUNDING, INC.,
BERCEN, INC., and ILLINOIS CENTRAL RAILROAD COMPANY Defendants**

DOCKET NO. FD 35171

PETITION OF ASHBRO, INC.

FOR DECLARATORY ORDER, INJUNCTIVE RELIEF, AND DAMAGES

1.

Petitioner, Ashbro, Inc ("Ashbro" or "Petitioner")) hereby petitions the Surface Transportation Board for a declaratory order to terminate a controversy, for injunctive relief, and for damages. The following parties are made defendants herein:

- (a) Misuri Associates Limited Partnership ("Misuri") having its principal business establishment in Louisiana at 30128 Eden Church Road, Denham Springs, Louisiana 70726;
- (b) Adell Compounding, Inc. ("Adell") having its principal business establishment in Louisiana at 30128 Eden Church Road, Denham Springs, Louisiana 70726, and
- (c) Bercen, Inc. ("Bercen") (as successor of Bercen Chemical Company, Inc.) having its principal business establishment in Louisiana at 30140 Eden Church Road, Denham Springs, Louisiana 70726.

(d) Illinois Central Railroad Company ("ICR") a foreign corporation, authorized to do and doing business in the State of Louisiana, having its principal address at 135 East Eleventh Place, Chicago, Illinois 60605; and,

(sometimes collectively referred to hereinafter as the "Defendants")

2.

Facts and Background

On December 28, 2008, Ashbro instituted a lawsuit against the Defendants in the Twenty-First Judicial District Court for the Parish of Livingston, State of Louisiana. On February 8, 2008, ICR removed the action to the United States District Court for the Middle District of Louisiana (the "District Court"). Subsequently, ICR filed a motion to dismiss under Rule 12(b)(6), seeking to dismiss the entirety of the lawsuit (including the claims against the Defendants) for lack of subject matter jurisdiction. The District Court ruled in favor of ICR and found that the Service Transportation Board has exclusive jurisdiction over the claims alleged against ICR and against the other named Defendants.

3.

The rights sought to be recognized herein is the right of Petitioner in and to the following described immovable property, free and clear, of any servitudes, rights-of-way, easements, rights of use or claim of ownership of any improvements, including rights of use or occupancy, of any person made a Defendant herein:

A certain tract or parcel of land, containing, 6.35 acres, including all buildings and improvements thereon, situated in the Parish of Livingston, State of Louisiana, in Section 32, Township 6 South, Range 3 East, Greensburg Land District of Louisiana,

as shown on a plat of survey made by A.J. Loup, Jr., Civil Engineer, dated June 1, 1976, said tract or parcel of land, according to plat of survey, being more particularly described as follows: From a point located at the intersection of the South right of way line of the Illinois Central Railroad and the Easterly right of way line of the Gulf States Utilities servitude, as the POINT OF BEGINNING, then proceeding South 82 deg. 00 min. 00 sec. West and along the South right of way line of the Illinois Central Railroad a distance of 602.55 feet to a point and corner, thence proceed South 08 deg. 00 min. 00 sec. East a distance of 547.15 feet to a point and corner; thence proceed North 00 deg. 22 min. 18 sec. West and along the Easterly side of the Gulf States Utilities servitude a distance of 413.84 feet to the POINT OF BEGINNING; subject to restrictions, servitudes, rights of way and outstanding mineral rights of record affecting said property.

(the foregoing shall be referred to hereinafter as the "Ashbro Property").

4.

Petitioner acquired and commenced its possession of the Ashbro Property in that Sale with Mortgage dated October 29, 1999, recorded November 19, 1999, under Entry No. 434263, of the public records of Livingston Parish, Louisiana (the "Ashbro Acquisition" is attached hereto as Exhibit "A").

5

At the time of the Ashbro Acquisition, a railroad spur track (the "Spur Track") crossed the Ashbro Property. The present location of the Spur Track is depicted on that unrecorded survey prepared by Alvin Fairburn & Associates, LLC dated January 30, 2007. The referenced survey is attached hereto as Exhibit "B". Petitioner is the owner of the Spur Track located on the Ashbro Property in the Ashbro Acquisition.

6.

Petitioner has been unable to discover with any certainty from the public records of Livingston Parish or from extra-judicial amicable inquiry from Defendants, any information regarding when and by whom the Spur Track was constructed.

7

The Ashbro Acquisition is silent as to, and fails to describe or specifically acknowledge, the existence of the Spur Track. The Ashbro Acquisition is also silent regarding the assumption by Ashbro of any obligations of any of its ancestors in title, whether recorded or unrecorded, that relate to the Spur Track. Moreover, the plat of survey referred to in the description of, the Ashbro Acquisition, and recorded under Entry No. 117468, of the public records of Livingston Parish, prepared by A.J. Loup, Jr., Civil Engineer, dated June 1, 1976, does not reflect the existence of the Spur Track (Exhibit "C")

8

By various conveyances, including a so called Transfer of Realty and Improvements Thereon, dated July 10, 1989, recorded July 11, 1989, under Entry No 279651 of the public records of Livingston Parish, Misuri is alleged to have acquired a 50 acre tract, which adjoins the Ashbro Property on its eastern most boundary (the "Misuri Transfer", which is attached hereto as Exhibit "D"). Said tract is more particularly described as:

A certain tract or parcel of ground containing five (5) acres, together with all of the buildings and improvements thereon situated in the parish of Livingston, State of Louisiana, in Sections Thirty-Two (32) and Thirty-Three (33), Township 6 South, Range 3 East, Greensburg Land District of Louisiana, being shown as TRACT "A" on a plat of survey made by Edward E Evans & Associates, Inc., dated December 8,

5

1966, revised on April 2, 1970, and being more particularly described as follows, to-wit: Beginning at a point located at the intersection of the East right-of-way line of the Gulf States Utilities Company servitude and the South right-of-way line of the Illinois Central Railroad, thence proceed North 82 degrees 0 minutes 0 seconds East along the South right-of-way line of the Illinois Central Railroad a distance of 503.52 feet to a point and corner; thence South 08 degrees 0 minutes 0 seconds East a distance of 410.18 feet to a point and corner; thence South 82 degrees 0 minutes and 0 seconds West a distance of 558.46 feet to a point and corner; thence North 00 degrees 22 minutes 18 seconds West a distance of 413 84 feet to point of beginning.

(hereinafter the "Adell Property")

9.

The Misuri Transfer is silent with regard to and makes no reference to any rail road Spur Track or side track or any rights inuring with respect to such tracks thereunder.

10.

Prior to the Misuri Transfer, Livingston Redevelopment Association, Inc. (an entity which Petitioner has been dissolved according to the online records of the Louisiana Secretary of State) and Polyform, Inc. entered into a Rental and Lease Agreement and Option to Purchase dated July 20, 1971, recorded June 21, 1970, under Entry No. 82222 of the public records of Livingston Parish, covering the Adell Property (the "Livingston Rental Agreement", which is attached hereto as Exhibit "E") The Livingston Rental Agreement is silent with respect to any Spur Track or side track and any rights or obligations granted or assumed with reference thereto.

11.

Also, prior to the Misuri Transfer, Livingston Redevelopment Association, Inc., Polyform, Inc. and Adell entered into a Bill of Sale and Assignment, dated July 20, 1971,

recorded June 14, 1979, under Entry No 154355 of the public records of Livingston Parish, in which Polyform conveys its rights under the Livingston Rental Agreement to Defendant, Adell (the "Polyform Bill of Sale", which is attached hereto as Exhibit "F"). The Polyform Bill of Sale is also silent with respect to any Spur Track or side track and any rights or obligations granted or assumed with reference thereto.

12.

Accordingly, as of July 11, 1989, it appears from the public records of Livingston Parish, as though Misuri owns the 5.0 acre Adell Property exclusive of any rights regarding any side track or the Spur Track, and that Adell is its Tenant.

13.

Adell intervened in the Misuri Transfer to acknowledge its awareness of the execution and effectiveness of the Adell Transfer and to recognize and acknowledge that the Misuri Transfer was being made subject to that Agreement to Sublease and Option to Purchase by and between Misuri Associates Limited Partnership and Adell dated December 1, 1984

14.

As previously noted, the Misuri Transfer, the Livingston Rental Agreement, and the Polyform Bill of Sale are all silent with respect to any side track or Spur Track and as to the assumption of any rights or obligations related thereto in favor of, or required of, Misuri or its Tenant/Subsidiary, Adell.

15.

In addition, the plat of survey prepared by Edward E. Evans & Associates, Inc., dated December 8, 1966, allegedly revised on April 2, 1970 (See Exhibit "G"), referenced in the description of the 5.0 acre Adell Property, set forth in Misuri Transfer, the Livingston Rental Agreement, and the Polyform Bill of Sale, does not reflect the existence of any side track or the Spur Track, or any portion thereof, as of the date of the Edward E. Evans & Associates, Inc. plat.

16.

Based on the foregoing, it is averred that as of April 2, 1970, the Spur Track had not been laid and in any event had not been laid the distance to the Adell Property.

17.

By that Cash Sale dated April 5, 1973, recorded April 6, 1973, under Entry No. 93600, in the public records of Livingston Parish, March Chemical Co., Inc (the "March Acquisition", which is attached hereto as Exhibit "H") acquired the following described property from The Wilson Steel Co., Inc :

A certain tract or parcel of land containing 3.23 acres including all buildings and improvements thereon and subject to all rights, ways, privileges and servitudes thereunto appertaining, situated in the Parish of Livingston, State of Louisiana, in Section 32, Township 6 South, Range 3 East, Greensburg Land District of Louisiana as outlined in red on a plat of survey made by A. J. Loup, Jr., and being more particularly described as follows:

Being at a point located at the intersection of the East right-of-way line of the Gulf States Utilities servitude, and the South right-of-way line of the Illinois Central Railroad; thence proceed S 10° 25' 28" W a distance of 105.96 feet; thence proceed S 20° 55' 54" W a distance of 16.53 feet to the point of beginning; thence proceed N 82° E a distance of 390.78 feet to a point and corner, thence proceed S 08° E a distance of

295.18 feet to a point and corner; thence proceed S 82° W a distance of 579.30 feet to the West right-of-way of Eden Church Road to a point and corner, then follow the West right-of-way of Eden Church Road N 31° 46' 34" E a distance of 118.01 feet to a point and corner; then continue along the West right-of-way line of Eden Church Road N 20° 55' 54" E a distance of 233.64 feet to the point of beginning

(the "Bercen 3.23 Acre Tract").

18.

Then, by that Act of Cash Sale dated October 5, 1978, recorded in the public records of Livingston Parish, the Bercen 3.23 Acre Tract was transferred by March Chemical Co., Inc. to Bercen Chemical Company, Inc. (the "Bercen Acquisition", which is attached hereto as Exhibit "I") as well as the following particularly described 0.97 acre tract:

A certain tract or parcel of land containing 0.97 acres including all buildings and improvements thereon and subject to all rights, ways, privileges and servitudes thereunto appertaining, situated in the Parish of Livingston, State of Louisiana, in Section 32, Township 6 South, Range 3 East, Greensburg Land District of Louisiana, shown on a plat of survey made by A. J. Loup, Jr., which is attached to the Exchange recorded in COB 178, page 288, Entry Number 93,601, Livingston Parish, and paraphrased for identification therewith, and being more particularly described as follows:

Begin at a point located at the intersection of the East right-of-way line of Gulf States Utilities Company servitude and the South right-of-way line of the Illinois Central Railroad which is the POINT OF BEGINNING.

Thence proceed N 82° E a distance of 349.29 feet to a point and corner; thence proceed S 08° E a distance of 115.00 feet to a point and corner, thence proceed S 82° W a distance of 390.78 feet to the West right-of-way line of Eden Church Road; thence proceed along the West right-of-way line of Eden Church Road N 20° 55' 54" E a distance of 16.53 feet to a point and corner; thence proceed along the West right-

of-way line of Eden Church Road N 10 25' 28" E a distance of 105.96 feet to the POINT OF BEGINNING.

(the "Bercen 0.97 Acre Tract").

19

In the March Acquisition, the Seller, The Wilson Steel Company, Inc., granted unto March Chemical Co., Inc., and its successors and assigns, the right to tie into Seller's spur track located in the Northwestern corner of The Wilson Steel Company, Inc.'s remaining contiguous property, which is now the Ashbro Property. The Wilson Steel Company, Inc. also granted unto March Chemical Co., Inc. a personal servitude of unspecified width and length for railroad tracks and railroad passage.

20

The servitudes created in the March Acquisition were expressly recognized and transferred to Bercen Chemical Company, Inc., but only as to the Bercen 3.23 Acre Tract transferred in the March Acquisition. No similar rights or servitude was granted as to the Bercen 0.97 Acre Tract or to the remaining contiguous Wilson tract (the Ashbro Property).

21.

On information and belief, the subject Spur Track is situated in part on the Bercen 0.97 Acre Tract. On further information and belief, the subject Spur Track is not situated, whatsoever, on the Bercen 3.23 Acre Tract.

22.

Petitioner avers, therefore, that neither March Chemical Co., Inc. nor its successor in title, Bercen/Berccn Chemical Company, Inc., has tied into the Spur Track on Ashbro's Property located in the Northwestern corner of remaining contiguous property of the former Wilson Steel Company, Inc. Petitioner further avers that neither March Chemical Co., Inc. nor its successor in title, Bercen/Bercen Chemical Company, Inc. has used the personal servitude in any manner consistent with the grant.

23.

Accordingly, Petitioner avers that the foregoing servitude and/or right of passage created and/or granted in the March Acquisition and recognized in the Bercen Acquisition has prescribed and/or been extinguished by ten year non-use.

24.

In sum, the public records of Livingston Parish, Louisiana, including its conveyance and mortgage records and all other appropriate public records of the Parish, are void of, and do not reveal any documents and/or contracts that provide for, create, evidence, or make any grant(s), or which create any rights or obligations in favor of the Defendants with respect to the Spur Track and/or the Ashbro Property.

25.

Nevertheless, and without any recorded evidence of any right to do so, and without the consent and/or permission of Petitioner, Defendants have used and/or crossed over the portion of

the Spur Track located on the Ashbro Property with rail cars, hauled, upon information and belief, by ICR.

26

On information and belief, in 1966, ICR and Ashbro's predecessors in title, Livingston Redevelopment Corporation, and Wilson Steel Company, Inc. entered into an agreement whereby ICR agreed to construct the Spur Track (the "1966 Agreement") While the 1966 Agreement purports to transfer the obligations to successors in title, the 1966 Agreement was not recorded in the public record. The 1966 Agreement contains clauses that Livingston Redevelopment and Wilson Steel agreed to save and hold harmless ICR and indemnify ICR from fire, loss or damage to property, regardless of railroad negligence The 1966 Agreement is attached hereto as Exhibit "J").

27.

The 1966 Agreement is followed by a second unrecorded document dated August 1, 1973, by and among Illinois Central Railroad, Livingston Redevelopment Corporation, Wilson Steel Company, Inc., and March Chemical Company (predecessor in title to Defendant, Bercen) (the "1973 Agreement", which is attached hereto as Exhibit "K")."

28.

The 1966 and 1973 Agreements each purport to establish the rights and obligations of the parties thereto with respect to the construction, operation, ownership and maintenance over a Track which is not specifically described therein, but which is allegedly identified on a plat

attached to the 1966 Agreement (*See Exhibit "J"*). The 1966 and 1973 Agreements do not, however, provide for compensation to the property owner(s), are not recorded, and were not assigned.

29.

Petitioner is not a party, or a legal entity successor of any of the parties, or assignee, to either the 1966 Agreement or the 1973 Agreement and has not assumed any of the obligations, burdens or responsibilities of any party thereto whether by contract or otherwise.

30.

As such, based on Louisiana's Public Records Doctrine, and because Petitioner is not a legal entity successor or assignee of any of the parties to the 1966 and 1973 Agreements, neither agreement is binding on Petitioner or the Ashbro Property (*See La R.S. 9.2722 et seq.*).

31.

Defendants have used the Spur Track and/or crossed over the Ashbro Property without any right to do so (whether by title or by acquisitive prescription) and without compensation to their owner, Petitioner

32

Therefore, based on the foregoing and any additional facts that may be discovered during the course of this litigation, Petitioner avers that Defendants have acquired no rights inuring to their benefit with respect to a servitude, right-of-passage, right-of-use, easements or rights-of-way over the portion of the Spur Track located on or over the Ashbro Property or on or over the

Ashbro Property. In addition, Petitioner avers that Defendants have not acquired by acquisitive prescription, or otherwise, a servitude, right-of-passage, right-of-use, easements or right-of-way over the Spur Track and consequently the Ashbro Property.

33.

Count One

a. Declaratory Relief (against ICR only)

Petitioner reavers and reasserts the allegations made herein as if copied *in extenso*.

34

Because Petitioner is not a party, or a legal entity successor, or assignee of any of the parties, to either the 1966 Agreement or the 1973 Agreement and has not assumed any of the obligations, burdens or responsibilities of any party thereto whether by contract or otherwise, Petitioner seeks a declaratory order that, based on Louisiana's Public Records Doctrine, and because Petitioner is not a legal entity successor or assignee of any of the parties to the 1966 and 1973 Agreements, neither agreement is binding on Petitioner or the Ashbro Property (*See La R.S. 9:2722 et seq.*).

35

Count Two

a. Declaratory Order – against Adell, Misuri, and Bercen

Petitioner reavers and reasserts the allegations made herein as if copied *in extenso*.

36.

Based on the foregoing, Petitioner seeks an order from this Board declaring (a) that the servitude and/or right-of-passage granted and/or created in the March Acquisition and acknowledged in the Bercen Acquisition has expired, been extinguished and/or prescribed for ten year non-use; (b) that Defendants have no right to use and/or cross over the portion of the Spur Track located on the Ashbro Property; and (c) that Defendants have not acquired by title, acquisitive prescription or by any other means available under law and/or fact, a servitude, right-of-passage, easement, right of use, and/or right-of-way over the Spur Track or the Ashbro Property; and (d) the Ashbro Property and Ashbro's ownership thereof to be free of any and all encumbrance or servitudes, personal or predial in favor of Defendants.

37.

Count Three

b. Injunctive Relief – Against Adell, Misuri, and Bercen

Petitioner reavers and reasserts the allegations made herein as if copied *in extenso*.

38.

Based on the foregoing, Petitioner seeks a Permanent Injunction prohibiting and enjoining Defendants from using and/or crossing over the portion of the Spur Track located on the Ashbro Property and from otherwise entering the Ashbro Property for any purpose whatsoever.

39.

Count Four

c. Damage Claim – Against Adell, Misuri, and Bercen

Petitioner reavers and reasserts the allegations made herein as if copied *in extenso*.

40.

In addition to the foregoing, Petitioner seeks damages from Defendants in an amount sufficient to compensate Petitioner for Defendants' (a) past use of the Spur Track located on the Ashbro Property as well as for their use of the Ashbro Property; (b) any and all past damages to the Ashbro Property, including any environmental damages resulting from Defendants' past use of the Spur Track, which damages, if any, will be proved at the trial of this matter. (c) for the burden, encumbrance, and/or inconvenience to Ashbro and/or the Ashbro Property resulting from Defendants' past use of the Spur Track; and (d) for unjust enrichment, compensation and any and all other damages and for any and all equitable relief to which it is entitled that may be proved at the trial of this matter

41.

In the alternative and only in the event that this Board determines that the injunctive relief sought herein is unavailable against any or all of the Defendants, then in that event, and only as against such party against whom Injunctive Relief is unavailable, Petitioner seeks, in addition to the damages set forth, damages in an amount sufficient to compensate Petitioner for Defendants' (a) future use of the Spur Track located on the Ashbro Property as well as for their use of the Ashbro Property; (b) for the continued burden, encumbrance, or inconvenience to Ashbro and/or the Ashbro Property from the Spur Track and/or Defendants' use thereof; and (c)

for unjust enrichment, compensation and any and all other damages and for any and all equitable relief to which it is entitled that may be proved at the trial of this matter.

42.

It is the intent of Ashbro by the filing of this cause, to interrupt the running of prescription in favor of any of the Defendants with respect to their potential claims as possessors of a servitude, right-of-passage, easement, right of use, and/or right-of-way over the Spur Track and consequently the Ashbro Property. Nevertheless, Petitioners specifically deny that any or all of Defendants possess the requisite intent of adverse possessors required under the Louisiana law to acquisitively prescribe against Petitioner as to the Spur Track and the Ashbro Property. Moreover, Petitioner avers that assuming Defendants can be classified as possessors, they have not possessed for a time sufficient to have acquisitively prescribed against Petitioner as to the Spur Track and the Ashbro Property.

43.

Count Five – Against Adell, Misur, and Bercen

Peaceable Possession

Petitioner reavers and reasserts the allegations made herein as if copied *in extenso*.

44.

For the foregoing reasons, Petitioner further prays for a ruling of this Board maintaining and/or restoring it to peaceable possession of the Ashbro Property.

WHEREFORE, Petitioner, Ashbro, Inc., prays that after due proceedings are had that there be a ruling in favor Ashbro, Inc. and:

- (a) Against ICR, declaring that neither Ashbro, nor the Ashbro Property, is bound by the 1966 Agreement.
- (b) Against Bercen, declaring that the servitude and/or right of Passage granted and/or created in the March Acquisition and acknowledged in the Bercen Acquisition has expired, been extinguished or prescribed by ten year non-use.
- (c) Against Defendants Adell, Misuri, and Bercen, declaring that Defendants, have no right to use or cross-over that portion of the Spur Track located on the Ashbro Property and have no right to enter the Ashbro Property for any reason whatsoever.
- (d) Against Defendants Adell, Misuri, and Bercen, declaring that Defendants have not acquired by title, acquisitive prescription or by any other means available in law or fact, a servitude, right-of-use, right-of-passage, easement or right-of-way over the Spur Track or the Ashbro Property.
- (e) Against Defendants Adell, Misuri, and Bercen, declaring the Ashbro Property and Ashbro's ownership thereof to be free of any and all encumbrances or servitudes, personal or predial in favor of Defendants or Defendants' property.
- (f) Against Defendants Adell, Misuri, and Bercen, issuing a Permanent Injunction prohibiting and enjoining Defendants from using and/or crossing over the portion of the Spur Track located on the Ashbro Property and from otherwise entering the Ashbro Property for any reason whatsoever.
- (g) Against Defendants, Adell, Misuri, and Bercen, awarding Petitioner damages as compensation for Defendants' (1) past use of the Spur Track located on the Ashbro Property as well as for their use of the Ashbro Property; (2) any and all past damages, including any environmental damages resulting from Defendants' past use of the Spur Track, which damages, if any, will be proved at the trial of this matter; (3) for the burden, encumbrance, and/or inconvenience to Ashbro and/or the Ashbro Property resulting from Defendants' past use of the Spur Track, and (4) for unjust enrichment, compensations and any and all other damages and for any and all equitable relief to which it is entitled that may be proved at the trial of this matter.

- (h) Only in the event that this Board determines that Petitioner, Ashbro, Inc., is not entitled to Injunctive Relief as to one or more of the Defendants, that this Board enter judgment awarding Petitioner, in addition to the damages set forth in paragraph (f) above, damages sufficient to compensate Petitioner for such Defendant or for the Defendants' (Adell, Misuri, and Bercen) (1) future use of the Spur Track located on the Ashbro Property as well as for their use of the Ashbro Property; (2) for the continued burden, encumbrance, or inconvenience to Ashbro and/or the Ashbro Property from the Spur Track and/or Defendants' use thereof; and (3) for unjust enrichment, compensations and any and all other damages and for any and all equitable relief to which it is entitled that may be proved at the trial of this matter.
- (i) Maintaining Petitioner, Ashbro, Inc., in peaceable possession of the Ashbro Property
- (j) Awarding Petitioner, Ashbro, Inc., pre-judgment and post-judgment interest on all amounts determined to be due.
- (k) Awarding Petitioner, Ashbro, Inc., all costs of these proceedings, reasonable attorneys' fees and such other and further relief as the Petitioners' may show themselves to be entitled.

Dated July 31, 2008

Respectfully Submitted,

**GORDON, ARATA, McCOLLAM
DUPLANTIS & EAGAN, L.L.P.
400 East Kaliste Saloom Road, Suite 4200
Lafayette, LA 70508
Phone: (337) 237-0132
Fax: (337) 237-3451**



**Samuel E. Masur (Louisiana Bar #1221)
Christopher B. Bailey (Louisiana Bar #29074)
Ashley S. Green (Louisiana Bar #29217)
Attorneys for Ashbro, Inc.**

BEFORE THE SURFACE TRANSPORTATION BOARD

ASHBRO, INC., Petitioner

VERSUS

**MISURI ASSOCIATES LIMITED PARTNERSHIP, ADELL COMPOUNDING, INC.,
AND BERCEN, INC., Defendants**

DOCKET NO. _____

PETITION OF ASHBRO, INC.

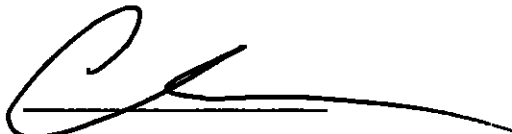
FOR DECLARATORY ORDER, INJUNCTIVE RELIEF, AND DAMAGES

I, Weldon A. Frommeyer, Jr., declare under penalty of perjury that the foregoing is true
and correct to the best of my knowledge. Executed on August 4, 2008
July 30, 2008



Declarant

I hereby certify that I have served all parties of record, as well as all counsel of record in
this proceeding with this document by United States mail, postage prepaid on August 4, 2008.
July 31, 2008



Attorney for Petitioner