

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33413

TRIMAX HOLDINGS, INC. - CORPORATE FAMILY TRANSACTION  
EXEMPTION - ALLEGHENY VALLEY RAILROAD COMPANY AND  
SOUTHWEST PENNSYLVANIA RAILROAD COMPANY

Decided:

On December 1, 1997, Trimax Holdings, Inc. (Trimax) filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(3)<sup>1</sup> for an intracorporate family transaction between Trimax and its commonly controlled affiliates, the Allegheny Valley Railroad Company (AVR), the Southwest Pennsylvania Railroad Company (SWP) and the Camp Chase Industrial Railroad Corporation (CCIR). Notice of the exemption was served and published in the Federal Register (62 FR 65848) on December 16, 1997. On June 19, 2000, Laurence I. Coe (Coe), Philip C. Larson (P. Larson), and Dennis E. Larson (D. Larson) (jointly, petitioners) filed a joint petition to revoke the exemption in this proceeding.<sup>2</sup>

Petitioners claim that the notice contained false and misleading information, because: Russell A. Peterson (Peterson) and Trimax allegedly exercised control of AVR on May 23, 1997, more than 6 months before the December 1, 1997 filing of the notice of exemption; Peterson and Trimax failed to disclose that they had not put the shares of the Larsons in a voting trust; the notice failed to disclose the contested nature of the transaction and thus was not simply a corporate family transaction; and the notice did not comply with 49 U.S.C. 11321 because a majority vote of AVR shareholders did not approve Trimax's acquisition of control of AVR.

---

<sup>1</sup> Under 49 U.S.C. 11323(a)(5), Board approval is necessary for “[a]cquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers.” Trimax invoked the class exemption from the application and approval procedures of 49 U.S.C. 11323 as they apply to “[t]ransactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.”

<sup>2</sup> Trimax filed a reply to the petition on July 13, 2000, having been granted an extension of time to do so. Coe then filed, on July 27, 2000, a rebuttal statement to the reply of Trimax, and Trimax filed, on August 9, 2000, a motion to strike the Coe rebuttal or, in the alternative, a motion for leave to file a reply to the rebuttal. We will grant the alternative motion and accept both Coe's rebuttal and Trimax's reply to the rebuttal. This will enable us to develop a more complete record without prejudicing any party.

Coe, in his rebuttal, argues that Trimax is the alter ego of Peterson, and Peterson should not be able to be shielded by Trimax from the statutory provisions of 49 U.S.C. 11323. We will deny the petition to revoke.

## BACKGROUND

Prior to the transaction covered by the notice, AVR was commonly controlled by Peterson, P. Larson, and D. Larson. See Notice and Phillip C. Larson, Russell A. Peterson, and Dennis E. Larson – Continuance in Control Exemption – Allegheny Valley Railroad Company, Finance Docket No. 32784 (ICC served Nov. 17, 1995) (AVR Control) at 2. Prior to 1997, the AVR board was comprised of P. Larson (25% stock ownership), D. Larson (25% stock ownership) and Peterson (50% stock ownership). According to petitioners, on May 23, 1997, and May 30, 1997, respectively, Trimax acquired through foreclosure all of P. Larson's and D. Larson's outstanding AVR stock,<sup>3</sup> after which the stock was 50% owned by Peterson and 50% owned by Trimax.

But the Larsons claim that they had already sold their 50% share interest in AVR to Coe on May 6, 1997, pursuant to a Share Purchase Agreement. Subsequently, Coe raised claims of breach of fiduciary duty against Peterson and Trimax. Coe v. Peterson and Trimax, Civil Action No. 97-1004 (W.D. Pa. filed June 4, 1997) (Coe). Furthermore, P. Larson is seeking damages for breach of fiduciary duty and wrongful use of civil process in Larson v. Allegheny Valley Railroad Company and Russell A. Peterson, Allegheny Court of Common Pleas, GD 99-15182 and Larson v. Russell A. Peterson and Allegheny Valley Railroad Company, First National City Bank, et al., Allegheny County Common Pleas Court, GD 99-7205. In a temporary restraining order in Coe, dated June 10, 1997, the court enjoined the defendants, inter alia, from taking action as a board of directors that would fundamentally change AVR's assets or current operations. The court, however, allowed the defendants to "authorize and direct the Allegheny Valley Railroad . . . in the operation of the Allegheny Railroad in its normal course of business."

## DISCUSSION AND CONCLUSIONS

Exercise of control before filing of notice. Petitioners allege that the notice is false and misleading because Peterson and Trimax exercised control of AVR on May 23, 1997, more than

---

<sup>3</sup> The acquisition of the Larsons' 50% stock interest in AVR, according to petitioners, was accomplished by means of the assignment of a loan from First National City Bank for \$282,033 to Trimax "without the knowledge of the majority of directors and shareholders of AVR." Petition to Revoke, at 1. Trimax, whose sole officer and director was Peterson, had a \$113,500 subordinated loan to AVR. The Larsons' and Peterson's AVR shares had been pledged as security for the First National City Bank loan. Petitioners claim that when Peterson acquired that loan through Trimax, he had Trimax declare AVR in default. Petitioners submit that Trimax acquired control of AVR by means of the foreclosure sale of the Larsons' shares in May 1997.

6 months before the December 1, 1997 date that the notice of exemption was filed with the Board. However, the control of AVR by Peterson and Trimax was not encompassed in the notice of exemption. AVR became a carrier, and Peterson and the Larsons jointly controlled it, on October 27, 1995. See Allegheny Valley Railroad Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Company, Finance Docket No. 32783 (ICC served Nov. 17, 1995); AVR Control. Board authorization was not required when Trimax acquired control of AVR in May 1997, because Trimax did not control any other carrier at that time and Peterson had already been granted Board authority as a 50% shareholder of AVR to jointly control AVR. Rather, the December 1997 notice was filed according to Trimax, because Trimax was about to acquire control of a second carrier, SWP, and that transaction required Board authorization.<sup>4</sup>

Voting trust. Petitioners claim that (a) the notice was false and misleading because it failed to disclose that the shares of the Larsons had not been placed in a voting trust pending STB authorization,<sup>5</sup> and, accordingly, (b) control of AVR had been illegally obtained. However, because Board authorization was not required for Trimax to acquire control of AVR in May, a voting trust was not necessary here to avoid an unauthorized control.

Alleged contested transaction. Petitioners claim that the notice was false or misleading because it failed to disclose the foreclosure of the Larsons' shares; the prior sale of those shares to Coe; the filing of Coe's lawsuit; and the entry of the temporary restraining order. Petitioners also assert that, because of the contested nature of the transaction, it is a misrepresentation to call this a "corporate family" transaction.

Under 49 CFR 1180.6(a)(1)(i), the notice need only include "[a] brief summary of the proposed transaction. . . ." Here, information about the contested nature of the AVR transaction was not required because approval was not sought for that transaction. Rather, the transaction for which regulatory approval was sought involved Trimax's acquisition of control of SWP. The notice briefly and accurately summarized the SWP transaction.

---

<sup>4</sup> Coe argues that Board approval was still necessary when Trimax obtained control of AVR, because Peterson was the majority shareholder of two railroads. Under Coe's theory, sections 11323(a)(4) [acquisition of control of at least 2 railroads by a person who is not a rail carrier] and 11323(a)(5) [acquisition of control of a rail carrier by a person that is not a railroad but who controls any number of rail carriers] are implicated because Trimax is 100% owned by Peterson, and Trimax is allegedly Peterson's alter ego. Except for saying that Trimax is 100% owned by Peterson, Coe does not present any support for his alter ego argument.

<sup>5</sup> See Water Transport Ass'n v. ICC, 715 F.2d 581, 582 (D.C. Cir. 1983) cert. denied 465 U.S. 1006 ("If the acquiring carriers put the stock of the acquired carriers in an independent voting trust, . . . the transaction does not violate §11[343] [the predecessor to section 11323 for rail carriers] because the acquiring carrier does not 'control' the acquired carrier.").

Majority vote of stockholders. Petitioners argue that the notice is false and misleading because it failed to disclose that Peterson and Trimax did not comply with 49 U.S.C. 11321, which petitioners claim mandates that a majority vote of AVR shareholders is necessary for Trimax to acquire control of AVR. That section provides that certain transactions can be carried out by a corporation “only with the assent of a majority, or the number required under applicable State law, of the votes of the holders of the capital stock of that corporation entitled to vote.” Again, this claim is irrelevant to the notice, which pertained only to the SWP transaction.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition to revoke is denied.
2. The rebuttal of Coe and the reply to the rebuttal by Trimax are accepted.
3. This decision is effective October 15, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary