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SERVICE DATE - APRIL 17, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 76

Decided: April 15, 1998

This decision addresses the motion by Richard and Judith Bell and George Rigamer, filed March 30, 1998, for leave to become a party of record for the purpose of commenting on and participating in this proceeding.¹ CSX² filed its reply (CSX-142) in opposition to the intervention request on April 2, 1998.

Movants request to intervene and participate individually and as representatives of a class of approximately 8,000 plaintiffs in the court proceeding In Re: New Orleans Train Car Leakage Fire Litigation, No. 87-16374, Civil District Court for the Parish of Orleans, LA. Movants indicate that they have obtained a substantial jury verdict against CSX and that, if the verdict becomes final, CSX's proposed acquisition of Conrail may adversely affect CSX's ability to pay any final judgment. Movants allege that they have evidence of CSX's safety policies and procedures, particularly in the New Orleans area, that may have a bearing on the desirability of the proposed transaction.

¹ Although movants designated their pleading as DOT-3, the Department of Transportation is not a party to the intervention request. Should movants make additional filings in this proceeding, they must use a designation other than DOT. Moreover, movants apparently failed to serve a copy of their request on counsel for the railroad applicants. See CSX-142 at 1 n.1. Movants must serve any additional filings in this proceeding on all parties of record, including counsel for applicants, as required by our rules.

² CSX refers to CSX Corporation and CSX Transportation, Inc. In this proceeding, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS), Conrail Inc. and Consolidated Rail Corporation (collectively Conrail), and CSX seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of Conrail's assets by and between CSX and NS.

CSX opposes the motion. CSX indicates that, on October 31, 1997, movants' jury verdict was vacated and set aside by the Supreme Court of Louisiana on the ground that the trial court erred in rendering a monetary judgment prior to adjudicating liability issues. According to CSX, movants have failed to show any reason why they could not have participated in this proceeding on a timely basis.

The motion to intervene will be denied. Responsive applications, comments, protests, and requests for conditions were required to be filed with us by the October 21, 1997 due date for such filings, as established in Decision No. 6.³ Movants indicate that their original jury verdict was rendered on September 9, 1997, but they have made no showing why they could not have appeared and made their alleged safety claims by the October 21, 1997 deadline. Movants' instant intervention request, filed more than 5 months after the established deadline, is much too late to be considered. Moreover, even at this late date, movants have not offered any evidence, other than bare allegations, of CSX's safety practices or policies. Thus, for these reasons we will deny the motion to intervene.

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

It is ordered:

1. The motion to intervene, filed by Richard and Judith Bell and George Rigamer, is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³ See Decision No. 6, served May 30, 1997, and published that day in the Federal Register at 62 FR 29387.