

BEFORE THE SURFACE TRANSPORTATION BOARD  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C. 20423

ALLIED ERECTING AND  
DISMANTLING CO., INC. and  
ALLIED INDUSTRIAL  
DEVELOPMENT CORPORATION,

Petitioners,

v.

OHIO CENTRAL RAILROAD, INC.,  
OHIO & PENNSYLVANIA  
RAILROAD COMPANY, THE  
WARREN & TRUMBULL RAILROAD  
COMPANY, YOUNGSTOWN &  
AUSTINTOWN RAILROAD, INC.,  
THE YOUNGSTOWN BELT  
RAILROAD COMPANY, THE  
MAHONING VALLEY RAILWAY  
COMPANY, and SUMMIT VIEW, INC.,  
collectively d/b/a The Ohio Central  
Railroad System, and GENESEE &  
WYOMING, INC.,

Respondents.

STB Docket No. FD 35316

**PETITIONERS' REBUTTAL**

Petitioners, Allied Erecting and Dismantling Co., Inc. and Allied Industrial Development Corporation (collectively "Allied"), by their attorneys, respectfully submit Petitioners' Rebuttal pursuant to the Surface Transportation Board's (the "Board") Decision dated June 23, 2010.

**I. Introduction.**

In their Reply, Respondents essentially argue that, because the Ohio & Pennsylvania Railroad Company ("OHPA") and the Mahoning Valley Railway Company ("MVRV") are common carriers, the language of the P&LE Easement and the LTV Easement (collectively, the "Easements") is meaningless and OHPA and MVRV can do whatever they want on the

Easements, including using the tracks as their own switchyard for economic gain. Alternatively, Respondents argue that if the Easements mean what Allied contends that they mean, then the Board should disregard the Easements and rule that the Ohio Central railroads can do whatever they want on the tracks because they are engaged in “transportation” as that term is defined by the Interstate Commerce Commission Termination Act of 1995 (ICCTA). However, neither the common carrier status of OHPA and MVRVY, nor any other principles of law, compel the conclusion that Allied’s claims are preempted by the ICCTA, or that Allied has no right to recover damages for violations of the Easements.

At this juncture, it is helpful to review the basic facts and legal principles which Respondents either admit or, at the very least, do not dispute. First, consistent with the Amended Complaint in the State Court Action, Respondents admit that the “LTV” tracks known as the No. 2 Main and the No. 3 Main were used for car storage, and that the No. 4 Main and Track 220 were used for the staging of cars. Respondents also admit that the P&LE main and siding tracks (i.e., the LE&E Main and LE&E Siding on the “Map”) were used for the staging and storage of cars. Reply, Appendix B, page B-2. Therefore, Respondents admit the central allegations of Allied’s Amended Complaint.

Significantly, the Reply does not respond to Allied’s well-supported contention that the tracks which are subject to the LTV Easement are industrial tracks, rather than main lines of railroad. Allied cites abundant factual testimony and documentary evidence showing the industrial character of these tracks, including the testimony of key former and existing Ohio Central employees and the Transportation Services Agreement between MVRVY and LTV. Respondents fail to rebut any of these facts. What follows from the fact that the LTV tracks are industrial tracks is that there are no common carrier rights or obligations which are attendant to those tracks. Nor is any effort made to distinguish the cases cited by Allied for various key

principles, e.g., the enforceability of railroad easements (PCS Phosphate Company, Inc. v. Norfolk Southern Corp., 559 F.3d 212 (4th Cir. 2009)) and the enforceability of voluntary agreements concerning the use of railroad tracks (Township of Woodbridge v. Consolidated Rail Corp., STB Docket No. 42053 (STB served December 1, 2000), clarified (STB served March 23, 2001), and available at 2000 STB LEXIS 709, 2000 WL 1771044 and 2001 STB LEXIS 299, 2001 WL 283507, respectively). Thus, Respondents apparently do not contest the basic principles that railroad easements and voluntary agreements concerning the use of railroad tracks may be enforced in courts of law. Furthermore, Respondents have not rebutted Allied's evidence which demonstrates that interstate railroad operations will not be affected if Allied's claims are allowed to proceed.<sup>1</sup> With these facts and principles in mind, Allied responds to the contentions raised by Respondents' Reply.

## **II. Common Carrier Rights Do Not Trump the Easements.**

Throughout this proceeding Respondents have taken the position that a railroad's common carrier status allows it to do whatever it wants on railroad tracks, regardless of the scope of the railroad's underlying easement rights. See, e.g., Reply at p. 6 (stating that "MVRV's common carrier rights dictate that it preserve the right to [stop and store cars on the LTV Tracks] in the future and when necessary."). Respondents cite no legal authorities for this proposition, and instead seem to assume that enforcement of the Easements would be an impermissible (i.e., preempted) regulation of rail transportation. However, if Respondents' position is to be accepted, then cases such as Township of Woodbridge, supra, which enforced an agreement curtailing the "idling of locomotives and switching of rail cars . . . between 10:00 p.m.

---

<sup>1</sup> It should be noted that none of the other railroads which have operated over the P&LE tracks over the last twenty (20) years has ever engaged in the stopping, storing and/or staging of railroad cars on the P&LE tracks, nor have they contended that they need or have the legal right to do so. Affidavit of John Ramun, ¶ 5-6 (attached hereto as Exhibit A).

and 6 a.m.” must have been wrongly decided. Moreover, if Respondents’ position is to be accepted, then any railroad easement, such as the Easements in this case, would be completely unenforceable against the easement holder. In effect, by being unenforceable, a railroad easement would operate as license for a railroad to do whatever it wants over the easement, regardless of the language thereof. Respondents have not cited, and Allied is not otherwise aware of, any legal authority for such a broad-sweeping and problematic legal principle. Similarly, Respondents’ untenable position begs the question as to why railroad companies require or enter into easement agreements in the first place. For example, if P&LE Railroad could have simply relied on its common carrier status to traverse the P&LE tracks, why did it obtain an easement upon selling the underlying property to Allied?

Respondents also cite a notice issued by the I.C.C. dated August 6, 1981, which, according to Respondents, authorizes MVRV to operate over the LTV tracks as a common carrier. Respondents’ Reply, Exhibit A-13. However, this document makes no reference whatsoever to the LTV tracks or the underlying property. Instead, the document references an unspecified line of railroad, as well as “approximately twenty-five (25) miles [of track] owned by industries being served in Mahoning County, Ohio.” Id. Therefore, this document does not demonstrate that any common carrier obligations are attendant to the LTV tracks which are at issue in this proceeding, much less that Respondents are not required to honor the Easements across Allied’s property. These facts and legal principles demonstrate that the Board should reject Respondents’ contention that OHPA and MVRV’s common carrier status trumps the terms of the Easements.<sup>2</sup>

---

<sup>2</sup> Regarding the actual language of the Easements, neither the LTV Easement nor the P&LE Easement expressly permits the easement holder to stop, stage or store rail cars on the tracks, much less to use it as a switchyard, which demonstrates that Ohio Central has violated the terms of the Easements. Respondents

### **III. The Board Cannot Expand the Scope of the Easements.**

At page 19 of their Reply, Respondents contend that “the Board should either read the Easements as allowing, by their terms, stopping, staging and storing of cars in the normal course of providing ‘transportation,’ or in the alternative, find that any restrictions on such normal transportation activities would interfere with the carrier’s common carrier operations and are therefore preempted.” Reply, p. 19. In essence, Respondents argue that if the non-exclusive Easements mean what Allied says that they mean, then the Board should disregard their terms and rule that Respondents can stop, store and stage cars on the tracks as they see fit, regardless of Allied’s right to both use the tracks for its own purposes and assign additional easements to third parties.

The Board admittedly has the authority to determine whether railroad real estate transactions would impair a carrier’s “ability to fulfill its continuing common carrier obligation.” State of Maine, Department of Transportation – Acquisition and Operating Exemption – Maine Central Railroad Company, 8 I.C.C.2d 835, 837 (1991). However, neither the State of Maine decision nor any other decision supports the proposition that the Board can expand the terms of the Easements.<sup>3</sup> In other words, the State of Maine decision and its progeny do not allow the Board to grant property rights to a railroad; they simply allow the Board to determine whether or not a proposed transaction would impair a carrier’s “ability to fulfill its continuing common carrier obligation.” State of Maine, 8 I.C.C.2d at 837. Here, the Easements were entered into in

---

now essentially ask the Board to sanction their misuses of the Easements. However, a ruling in favor of Respondents would render the non-exclusive nature of the Easements superfluous.

<sup>3</sup> If the Board were to expand the scope of what is permitted under the Easements, such an action would amount to a de facto and/or regulatory taking of Allied’s property rights. The Board does not possess the authority to condemn property on behalf of a railroad.

1993, approximately eighteen (18) years ago, by MVRV and OHPA's predecessors in interest.<sup>4</sup> The predecessor in interest, LTV and P&LE, apparently were satisfied that they had retained sufficient easement rights to protect their interests, and to the extent that the Board reviewed and approved any aspects of these transactions, the Board must have also been satisfied.

The bottom line is that the time to object to the language of the Easements has come and gone. If Respondents feel as if they need additional easement rights over the LTV tracks, they were and are free to negotiate with Allied for additional rights by way of an amended easement. However, there is no evidence that Respondents have ever done so, apparently because disregarding and abusing the easements was more convenient and profitable than attempting to purchase additional rights.

#### **IV. Allied's Ownership of the Tracks Subject to the LTV Easement.**

To support the contention that Ohio Central can do whatever it wants on the LTV Easement, Respondents insinuate (but do not explicitly assert) that Allied does not own the tracks. Reply, p. 5 n.6. This proposition is refuted by numerous facts. First, as the Reply states, the deed from LTV to Allied unequivocally transferred both the land and the "appurtenances," which would necessarily include the tracks, despite Respondents' unsupported assertion to the contrary. Moreover, both the deed from LTV to Allied and the accompanying Sale and Purchase Agreement<sup>5</sup> fail to state that the tracks were retained by LTV, which further demonstrates that

---

<sup>4</sup> Mr. Ramun's deposition testimony indicates that none of the prior easement holders used the Easements to store and stage cars. See Petitioners' Opening Statement, Exhibit B, pages 52, 98 (testifying that Ohio Central's misuses of the Easements commenced upon Ohio Central's arrival). His Affidavit (attached hereto) makes this point clearly. Ramun Affidavit, ¶ 5. This testimony refutes Respondents' contention that enforcement of the Easements would substantially interfere with any common carrier obligations. Furthermore, the current operator of the P&LE Line, Youngstown and Southeastern Railway Company, informed the Board by letter that "its interest in this dispute has been satisfied," and has withdrawn from this proceeding. See letter to the Board dated March 1, 2011.

<sup>5</sup> These documents are attached to Respondents' Reply as Exhibits A-3 and A-4.

they were conveyed to Allied as “appurtenances.” Because LTV had already conveyed the tracks to Allied, it does not matter if LTV later purported to conveyed the tracks to MVRV since LTV cannot convey what it does not own. Furthermore, although the deed from LTV to Allied is the “final word” on what was conveyed, nothing in the LTV Easement suggests that LTV retained ownership of the tracks. Finally, although at one point LTV erroneously contended that it continued to own the “LTV” tracks, it apparently abandoned that position after receipt of Mr. Opalinski’s letter dated March 25, 1994. See Reply, Appendix A, Exhibit 5. Therefore, in deciding the issues regarding the LTV Easement, the Board should disregard Respondents’ incorrect suggestion that Allied does not own the “LTV” tracks.

**V. Allied is Permitted to Use its Own Tracks On Its Own Property.**

To further support the argument that Ohio Central can do whatever it wants on the P&LE Line, Respondents claim that, when “read as a whole,” the P&LE Easement reflects that “Allied clearly was not permitted to use the tracks subject to the P&LE Easement.” Reply at p. 8. Respondents cite no authority, and Allied has found no authority, for the proposition that a landowner such as Allied cannot use its own tracks on its own property to conduct intra-plant operations, regardless of whether it is a common carrier.<sup>6</sup> Furthermore, the P&LE Easement expressly states that it is a “non-exclusive easement ...” Allied’s Opening Statement, Exhibit 2 to Exhibit A. Under time-honored properly law principles, because the P&LE Easement is a

---

<sup>6</sup> Mr. John R. Ramun testified at his deposition that Allied uses all of the railroad tracks on its property in the course of its business. Allied’s Opening Statement, Exhibit B, p. 18. There is no evidence in the record (or otherwise) that Respondents have ever objected to Allied’s use of its own tracks. Furthermore, the Affidavit of John Ramun unequivocally states that prior to this litigation, no one had ever suggested that Allied could not use its own tracks on its own property for its own internal purposes. Ramun Affidavit, ¶ 11.

“non-exclusive easement,” Allied enjoys the right to use the easement for its own purposes and convey other easement rights to third parties.<sup>7</sup>

The fact that Allied can use its own tracks, particularly the P&LE Line, is confirmed by Ohio Central’s Operations Bulletin No. 01 for the Youngstown Division. See Allied’s Opening Statement, Exhibit O. With respect to the P&LE Easement, the Operations Bulletin states that “[t]he owning entity [i.e., Allied] has provided written authority to multiple entities for use of this section of the former LE&E as a thoroughfare and such use must be considered to be on a ‘first-come, first-served’ basis only.” Allied’s Opening Statement, Exhibit O, p. 13, ¶ 8. This internal document unequivocally shows that Ohio Central recognized Allied’s right to not only use the P&LE Easement as it saw fit, but to assign additional easements to third parties.

The fact that Allied can use its own tracks on its own land is further confirmed by the Affidavit of John Ramun. As Mr. Ramun states in his Affidavit, Allied purchased the various parcels of land and tracks from P&LE and LTV Steel in order to use the land and tracks for its own internal, industrial purposes, including the movement of rail cars within its own industrial facility. Ramun Affidavit, ¶ 9. With respect the “P&LE” tracks, an earlier easement agreement between Allied Erecting and Dismantling Co., Inc. and The Pittsburgh and Lake Erie Railroad Company, as well as the amendment thereto, give Allied Erecting and Dismantling Co., Inc. “an easement for access over P&LE property to make truck and rail movements, for installation of additional track; and for the acquisition of track.” Ramun Affidavit, Exhibit 1, p. 1 (emphasis

---

<sup>7</sup> See Restatement of Property, § 493, comment d. (if easement is non-exclusive, “the owner and possessor of the servient tenement has not only the privilege himself to make the use authorized by the easement, but he retains the power to create like privileges in others.”); Restatement (Third) of Property - Servitudes, § 4.9, (“Except as limited by the terms of the servitude . . . , the holder of the servient estate is entitled to make any use of the servient estate that does not unreasonably interfere with enjoyment of the servitude); id., comment e (“[T]he holder of the servient estate may create additional servitudes in land burdened by a servitude if the additional servitudes do not unreasonably interfere with the enjoyment of the prior servitude holders.”).

added). This clearly demonstrates that Allied had and now has the right to use the tracks which are subject to the P&LE Easement. Furthermore, prior to the instant litigation before the Board, no one had ever suggested that Allied was not permitted to use the “P&LE” tracks or the “LTV” tracks for its own internal purposes. Ramun Affidavit, ¶ 10. Accordingly, in deciding the issues raised by Allied’s Petition, the Board should reject Respondents’ unsupported argument that Allied cannot make use of its own land and its own tracks.

**VI. Respondents Rely Upon a Litany of Unsupported Factual Assertions.**

It is worth pointing out the numerous unsupported assertions of fact which are made in Respondents’ Reply. Because these statements contain no citation to evidence of record, they should be disregarded by the Board.

First, at page 10 of their Reply, Respondents offer the unsupported allegation that “OHPA did not use the P&LE Easement except during times when it had ICC or Board authority to be the operator.” At page 17, Respondents contend that “the absolute ban on stopping, storing or staging sought by Allied through its claims would be a substantial interference with the ability of the railroad to conduct common carrier obligations, and therefore is not permissible.” However, the only evidence of record is to the contrary. Mr. Ramun’s Affidavit makes it clear that over the last twenty (20) years, no other railroad has contended that it needed to stop, store or stage cars on the P&LE tracks, or that it had the legal right to do so under an easement from Allied Erecting and Dismantling Co., Inc. Ramun Affidavit, ¶ 5-6. Respondents go on to contend that enforcement of the terms of the Easements “would affect the operations of the current operator YSRR, and they would have interfered with the operations of OHPA as they were conducted.” Beyond being factually unsupported, this contention is belied by the fact that YSRR has withdrawn from this proceeding because “its interest in this dispute has been

satisfied.” See letter to the Board dated March 1, 2011. Accordingly, the Board should ignore these factually unsupported statements.

**VII. Whether Certain Respondent Carriers Should be Dismissed Should be Addressed by the Court of Common Pleas of Mahoning County, Ohio.**

The Respondents contend that “all Respondent carriers other than MVRVY and OHPA should be summarily dismissed as parties, and all claims against them dismissed as well,” because “[t]here are no allegations in the underlying complaint or in Allied’s opening statement that indicate that any other railroad carriers in the Ohio Central Railroad System claimed authority to operate on either the LTV Easement or the P&LE Easement, or that they in fact operated there.” Reply at p. 11. However, this argument raises issues which are not before the Board, mischaracterizes the Amended Complaint in the State Court Action, and should be rejected.

First, the Board’s Decision dated June 23, 2010 noted that it needed to determine “whether Summit View and GWI are proper parties to this proceeding.” Decision, p. 2 (emphasis added).<sup>8</sup> This issue was raised by Respondents in response to Allied’s Petition for Declaratory Order. Id. Accordingly, the Board asked the parties to submit “[e]vidence in support of or against naming Summit View and GWI as respondents in this proceeding.” Id., p. 4 (emphasis added). Neither Allied nor the Respondents raised, and the Board’s Decision did not address, whether the Respondent carriers other than MVRVY and OHPA are proper parties to this proceeding.

---

<sup>8</sup> Summit View and GWI are not parties to the State Court Action, but were named as parties to this proceeding “to ensure that any declaratory order by the Board applies not only to the Ohio Central railroads, but also to their corporate parents.” Allied’s Opening Statement, p. 18. When this case returns to the Court of Common Pleas of Mahoning County, Ohio, Summit View and GWI will not be parties because Allied’s Petition for Declaratory Order does not add parties to the State Court Action. Allied would have to file a Second Amended Complaint to add Summit View and GWI to the case.

Allied has no objection to the Board determining whether Summit View and GWI, which are not parties to the State Court Action, are proper parties to this proceeding. However, by asking for the dismissal of claims against some, but not all, of the Respondent carriers, the Respondents are asking the Board to engage in what amounts to summary judgment proceedings on issues which were not referred to the Board by the Court of Common Pleas of Mahoning County, and were not previously raised by either Allied or Respondents, and should be decided, if at all, by the Court of Common Pleas of Mahoning County.

Second, Respondents mischaracterize the allegations of the Amended Complaint when they state that there are no allegations that railroads other than OHPA and MVRVY operated over and violated the Easements. The Amended Complaint collectively refers to “the various named Ohio corporations doing business as The Ohio Central Railroad System ...” as “Ohio Central.” Amended Complaint, p. 2.<sup>9</sup> The Amended Complaint goes on to allege that “Ohio Central has continually held, stored, and/or otherwise impermissibly stopped rail cars on various railroad tracks on the Allied Property ...” in a manner which violates the Easements. Amended Complaint, p. 5. The Amended Complaint also alleges that Ohio Central “is holding, storing and/or otherwise impermissibly stopping its cars on railroad tracks of Allied upon which it has no easement rights whatsoever and has damaged Allied’s rail, bumper, and other property.” *Id.* at 5. In other words, the Amended Complaint expressly alleges that each of the Respondent carriers has violated the Easements, regardless of which entity possessed a common carrier license from the Board. Therefore, Respondents are incorrect to claim that there are no allegations that railroads other than OHPA and MVRVY operated over or violated the Easements.

Based upon the foregoing reasons, while the Board is free to consider whether Summit View and GWI are proper parties to this proceeding, it should refrain from adjudicating issues

---

<sup>9</sup> The Amended Complaint is Exhibit A to Allied’s Opening Statement.

which are not before it and which involve disputed issues of fact which should be adjudicated in the Court of Common Pleas of Mahoning County, Ohio.

**VIII. The Cases Cited by Ohio Central are Distinguishable.**

Respondents cite four cases for the proposition that “[c]ourts have consistently applied ICCTA preemption to dismiss claims ... brought by property owners against railroads based on the alleged misuse of rails running over or adjacent to the plaintiffs’ property.” Reply at 19-20 (citing Suchon v. Wisconsin Central Ltd., 2005 WL 568057 (W.D. Wis. Feb. 23, 2005), Guckenberg v. Wis. Cent. Ltd., 178 F.Supp.2d 954 (E.D. Wis. 2001), Maynard v. CSX Transp., Inc., 360 F.Supp.2d 836, 842 (E.D. Ky. 2004), and Mark Lange – Petition for Declaratory Order, STB Finance Docket No. 35037 (served January 28, 2008), slip op. at 4). Each of these cases is distinguishable and does not compel the conclusion that Allied’s claims are preempted.

In Suchon, the plaintiff’s auto body garage was located near railroad tracks which had been recently upgraded from “switching” tracks to Class 3 (maximum 40 m.p.h.) “through” tracks. Suchon, 2005 WL 568057 at \*2. The plaintiff’s complaint alleged, *inter alia*, that “customers and suppliers are frequently cut off from access to his buildings when trains block the railroad crossings, visitors to his business feel as if they are experiencing an earthquake when a train goes by and his shop is exposed to dust, fumes and debris thrown up by passing trains.” Id. at \*3. The court held that the plaintiff’s nuisance claim was preempted under the ICCTA. Id. at \*4. However, unlike Allied, the plaintiff was simply an adjacent landowner who objected to the railroad’s operations. Unlike Allied, the plaintiff did not own the land, did not own the tracks, was not the grantor of the railroad’s easements rights, and certainly did not have the right

to use the tracks for its own purposes. Here, Allied's rights and claims<sup>10</sup> arise out of the Easements, which easily distinguishes the Suchon case from the facts of this case.

The Guckenberger decision is distinguishable for the same reason. The plaintiffs lived across the street from railroad tracks which had experienced a significant growth in traffic volume. Guckenberger, 178 F.Supp.2d at 956. Their complaint was that "the coupling and uncoupling of trains, squealing of wheels, braking noises, slamming of cars, switching direction of train travel, flying switches of railroad cars, idling locomotive diesel engines and other similar incidents ..." amounted to a nuisance under Wisconsin's common law. Id. The court found that the claim was preempted by the ICCTA. Again, unlike Allied, the plaintiffs were adjoining landowners, with no property rights of their own to enforce, who nevertheless objected to how the railroad conducted its operations. Like Suchon, the distinguishing fact is that Allied is enforcing its own property rights under the Easements.

The Maynard decision admittedly involved a railroad with what was described as a "deed of easement" or "right of way" traversing the plaintiffs' property. However, the case is nevertheless distinguishable. First, as the court specifically noted, the claims did not arise out of the plaintiffs' easement rights, but instead were purely "common law negligence and nuisance claims," i.e., they did not arise out of the terms of the landowners' easement. Maynard, 360 F.Supp.2d at 841. Second, the terms of the railroad's "deed of easement" were not described in the decision, nor did the decision say whether the railroad actually owned the underlying land or the tracks. These facts are significant because unless the Board holds that the terms of a railroad easement are meaningless and cannot be enforced against a railroad, the terms of the Easements

---

<sup>10</sup> Allied's Amended Complaint alleges claims for misuse/abuse/overburdening of the Easements (Count I), unreasonable use of the Easements (Count II), unjust enrichment (Count III) and trespass (Count IV). The trespass count is based on the principle that, under Ohio law, the use of an easement beyond its scope amounts to a trespass. The claim for unjust enrichment seeks damages for both the misuse of the Easements and for the use of property over which Ohio Central had no rights whatsoever.

must be considered in determining whether the railroad's conduct violates its limited property rights. Additionally, the court's decision indicates that had the claims been based upon the railroad's "deed of easement," ICCTA preemption would not have applied. Id. at 841. Therefore, the Maynard decision does not stand for the proposition that Allied's claims are preempted by the ICCTA.

The Mark Lange decision is likewise distinguishable because the railroad had not violated an easement agreement with the plaintiff, but instead had engaged in a de facto condemnation of the plaintiff's land by erecting a fence on it and using the land inside the fence for storage and track access. Allied has made no argument that Ohio Central's actions amount to a de facto taking. As such, the Mark Lange decision does not support the preemption of Allied's claims.

**IX. The P&LE Easement Does Not Permit Use of the Side Tracks.**

As an added justification for their misuse of the P&LE Easement, Respondents contend that the P&LE Easement permits the use of the LE&E Main Track and the LE&E Siding, because a version of the P&LE Easement dated November 10, 1993 provides an easement over "that portion of the rail line located upon property acquired by ..." Allied. Reply, p. 7. The P&LE Easement which Allied attached to its Amended Complaint is dated September 17, 1993 and grants an easement over the "main line." Petitioner's Opening Statement, Exhibit 2 to Exhibit A. Consistent with the granting of an easement over only the main line, the Limited Warranty Deed to Allied reserves "a certain non-exclusive easement solely for the purpose of continuing the operation of a railroad over the main line located on that portion of the above-

granted premises ...”<sup>11</sup> Thus, the language of the Limited Warranty Deed fully supports Allied’s position that Ohio Central was not permitted to use the LE&E Siding.

The fact that there is a question regarding which version of an easement is operative, and what the operative version of the easement means, demonstrates that there are issues of fact which must be adjudicated in a court of law, by a jury, and after the parties have had a full and fair opportunity to present all relevant evidence. Therefore, the Board should decline to determine which P&LE Easement is operative in connection with determining the issues which are raised by this proceeding.

**X. The Board Can Enforce the Easements if Enforcement by the Court of Common Pleas of Mahoning County, Ohio is Preempted.**

Respondents’ position – that the Easements cannot be enforced in the State Court Action due to the preemptive effect of the ICCTA – has not been established in this proceeding. However, even assuming that enforcement of the Easements by way of the State Court Action is preempted, due process principles dictate that there be some enforcement mechanism available to an aggrieved landowner such as Allied. Therefore, if the Board determines that the enforcement of the Easements in the State Court Action is preempted, it should nevertheless determine that the Easements should be enforced by the Board.

**XI. Conclusion.**

Based upon all of the foregoing reasons and authorities, Petitioners respectfully request a declaration that the issues raised by Allied’s Amended Complaint do not fall within the Board’s jurisdiction, and that this action should be remanded to the Court of Common Pleas of Mahoning County, Ohio for the resolution of all issues raised therein. In the alternative, Petitioners

---

<sup>11</sup> An unsigned version of the Limited Warranty Deed to Allied is attached to Appendix B to Petitioner’s Reply as Exhibit B-2. A copy of the signed and filed version is attached hereto as Exhibit B. Both state that the P&LE Easement is for the “operation of a railroad over the main line ...,” which further demonstrates that the easement holder was no have no right to operate over the side tracks.

respectfully request a declaration that the Easements do not allow Ohio Central to stop, store or stage cars on the tracks covered by the Easements, and that Allied is entitled to damages due to Ohio Central's violations of the Easements and/or Allied's common law property rights. Petitioners also request a declaration that Ohio Central, its successors and assigns presently have no operating or other property rights over the railroad tracks which are related to the P&LE Easement, as well as the siding and other tracks (i.e., LE&E Siding, Allied Lead, Center Street Pocket, and LE&E Stub). Finally, Petitioners request a declaration that the issue of whether the rights created by the LTV Easement have been extinguished by virtue of Allied's purchase of adjacent properties should be decided in the Court of Common Pleas of Mahoning County, Ohio.

Respectfully submitted,



Richard H. Streeter, Esq.  
5255 Partridge Lane, NW  
Washington, DC 20016  
202-363-2011  
202-289-1330 (fax)

Christopher R. Opalinski, Esquire  
Ohio Bar No. 0084504  
copalinski@eckertseamans.com

F. Timothy Grieco, Esquire  
Pa. I.D. No. 81104  
tgrieco@eckertseamans.com

Jacob C. McCrea, Esquire  
Pa. I.D. No. 94130  
jmccrea@eckertseamans.com

Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower, 44<sup>th</sup> Floor  
600 Grant Street  
Pittsburgh, Pennsylvania 15219

*Attorneys for Petitioners, Allied Erecting  
and Dismantling Co., Inc. and Allied Industrial  
Development Corporation*

Dated: March 16, 2011

BEFORE THE SURFACE TRANSPORTATION BOARD  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C. 20423

ALLIED ERECTING AND  
DISMANTLING CO., INC. and  
ALLIED INDUSTRIAL  
DEVELOPMENT CORPORATION,

Petitioners,

v.

OHIO CENTRAL RAILROAD, INC.,  
OHIO & PENNSYLVANIA  
RAILROAD COMPANY, THE  
WARREN & TRUMBULL RAILROAD  
COMPANY, YOUNGSTOWN &  
AUSTINTOWN RAILROAD, INC.,  
THE YOUNGSTOWN BELT  
RAILROAD COMPANY, THE  
MAHONING VALLEY RAILWAY  
COMPANY, and SUMMIT VIEW, INC.,  
collectively d/b/a The Ohio Central  
Railroad System, and GENESEE &  
WYOMING, INC.,

Respondents.

STB Docket No. FD 35316

AFFIDAVIT OF JOHN R. RAMUN

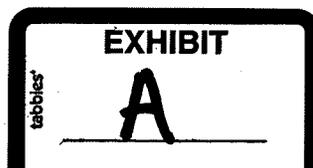
STATE OF OHIO

COUNTY OF MAHONING

:  
:  
: SS:  
:

I, John R. Ramun, having first been duly sworn, depose and state as follows:

1. I am over the age of eighteen (18) years and understand the obligation of an oath.
2. I am the President of Allied Erecting and Dismantling Co., Inc. and Allied Industrial Development Corporation (collectively "Allied").



3. I am fully familiar with the property rights possessed by Allied Erecting and Dismantling Co., Inc. and Allied Industrial Development Corporation, particularly the easement agreements and the related real estate transactions which are at issue in this litigation.

4. I am also fully familiar with the use of the tracks which are referred to as the "P&LE" tracks because, among other reasons, the tracks are directly in front of my business, and I have driven past the "P&LE" tracks on almost a daily basis for well over twenty years.

5. Over the past twenty years, the other railroads which have operated over the "P&LE" tracks, such as the P&LE Railroad, the Youngstown & Southern Railroad, the Central Columbiana & Pennsylvania Railroad, and Eastern States Railroad, LLC/Youngstown and Southeastern Railroad, have never engaged in the stopping, storing and/or staging of railroad cars on the "P&LE" tracks.

6. Other than the "Ohio Central" respondents, these other railroads have never contended that they need to stop, store or stage rail cars on the "P&LE" tracks, or that they have the legal right to do so under either the interim Easement Agreement dated September 17, 1993 or the final, recorded Easement Agreement dated November 10, 1993.

7. I am aware that the Respondents contend, in their Reply of Respondents, that Allied Erecting and Dismantling Co., Inc. and Allied Industrial Development Corporation have no right or authority to use the "P&LE" tracks, or the "LTV" tracks.

8. Attached to this Affidavit as Exhibits 1 and 2 are a Reciprocal Easement Agreement between Allied Erecting and Dismantling Co., Inc. and The Pittsburgh and Lake Erie Railroad Company dated June 3, 1992, as well as an amendment to that easement.

9. Among other reasons, Allied purchased the land and tracks from P&LE (and from LTV Steel) in order to use the land and tracks for its own internal, industrial purposes, including

the movement of rail cars within its own industrial facility.

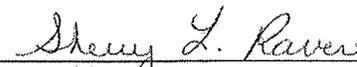
10. The Reciprocal Easement Agreement between Allied Erecting and Dismantling Co., Inc. and The Pittsburgh and Lake Erie Railroad Company dated June 3, 1992, as well as the amendment thereto, reflect such intended uses.

11. Prior to the instant litigation before the Surface Transportation Board, no one has ever suggested that Allied was not permitted to use the "P&LE" tracks or the "LTV" tracks for its own internal purposes.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 16th DAY OF  
MARCH, 2011.

  
\_\_\_\_\_  
John R. Ramun

Sworn to and subscribed  
before me this 16th day  
of March, 2011.

  
\_\_\_\_\_  
Notary Public

My commission expires:

**SHERRY L. RAVER  
STATE OF OHIO  
MY COMMISSION EXPIRES  
NOVEMBER 15, 2014**

(2)

RECEIVED FOR RECORD  
BY 201 O'CLOCK P RE  
JUN 5 1992  
BRUCE E. PAPALIA  
Recorder, Mahoning County, Ohio  
\$14.00

RECIPROCAL EASEMENT AGREEMENT

COMPARED  
D. D.

THIS RECIPROCAL EASEMENT AGREEMENT, made this 3<sup>rd</sup> day of June, 1992, between THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Delaware, successor in interest by merger to The Lake Erie and Eastern Railroad Company, having its principal office in the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania, hereinafter referred to as P&LE.

AND

ALLIED ERECTING & DISMANTLING COMPANY, INC., a corporation organized and existing under the laws of the State of Ohio, with its principal office in the City of Youngstown, County of Mahoning and State of Ohio, hereinafter referred to as ALLIED.

WITNESSETH:

WHEREAS, the parties hereto have agreed that P&LE will convey to ALLIED an easement for access over P&LE property to make truck and rail movements, for installation of additional track; and for the acquisition of track; and

WHEREAS, the parties hereto have also agreed that ALLIED will reserve to P&LE an easement for the location of P&LE'S 12-foot roadway and tracks; and

WHEREAS, P&LE and ALLIED have provided for the terms of such eastment in an Agreement of Sale, dated February 19, 1992; 5-5271



NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, P&LE does hereby grant and convey to ALLIED a permanent easement over its property between survey station 109± and 125± for ALLIED to make truck and rail movements between Parcels 1 and 2, as described in deed of conveyance dated June 3, 1992 subject to the approval of P&LE's Chief Engineer. P&LE also grants an additional easement for the installation of track between Survey Station 77+00± and Survey Station 70±00± and an easement for the track being acquired by ALLIED between Survey Station 109± and Survey Station 120+50±, as approved by P&LE's Chief Engineer, as shown in color green on the plan dated February 2, 1992, attached hereto and made a part hereof, said easement to continue so long as the track is in use;

FURTHERMORE, ALLIED shall be responsible for maintaining, repairing or replacing the grade crossing which provides access from the Property to Poland Avenue, located at Survey Station 122+80±, at its sole expense. Prior to any work being performed on said crossing, all plans shall be submitted to P&LE's Chief Engineer for approval and coordination of scheduling of such work;

AND, FURTHER, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, ALLIED does hereby grant and convey to P&LE a permanent easement for the location of a 12-foot right of way for road purposes for ingress and regress to its line of railroad, the aforesaid grade crossing, and access to Poland Avenue, and two easements for P&LE tracks between Survey Station 77±00± and Survey Station 84±00±, as more particularly

shown on print of plan attached hereto; provided, however, if ALLIED should need to relocate said right of way, it shall provide, at its sole expense, a suitable alternative right of way. ALLIED may remove, grade or fill the existing track between Survey Station 84± to Survey Station 125± on the Property to allow the establishment of the said road. Said right of way shall comply with all applicable Ohio Public Utility Commission regulations.

IN WITNESS WHEREFORE, P&LE and ALLIED have executed this instrument by their duly authorized officers, as of the day and year first above written.

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY

By Gordon E. Neuenschwander  
President Gordon E. Neuenschwander

ALLIED ERECTING & DISMANTLING COMPANY, INC.

By John R. Ramun  
President John R. Ramun

The Pittsburgh & Lake Erie Railroad Co.  
WITNESSES:

Daniel J. Dela

ATTEST:

G. Edward Yurcon  
Secretary G. Edward Yurcon

ATTEST:

Louise V. Ramun  
Secretary Louise V. Ramun

Allied Erecting & Dismantling Co., Inc.  
WITNESSES:

Charles E. Lunlap

Doris B. Kemp

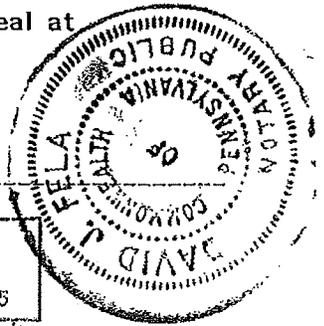
STATE OF PENNSYLVANIA :  
: SS  
COUNTY OF :

Before me, a notary public, in and for said county and state, personally appeared the above named **The Pittsburgh and Lake Erie Railroad Company** by Edward Yurcon, Secretary and Gordon E. Neuenschwander, President, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at this 3rd day of June, 1992.

*David J. Fela*  
-----  
NOTARY PUBLIC

Notarial Seal  
David J. Fela, Notary Public  
Pittsburgh, Allegheny County  
My Commission Expires Sept. 25, 1995  
Member, Pennsylvania Association of Notaries



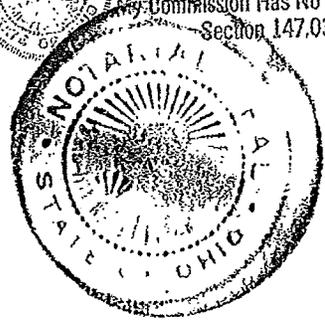
STATE OF OHIO :  
: SS  
COUNTY OF MAHONING :

Before me, a notary public, in and for said county and state, personally appeared the above named **Allied Erecting & Dismantling Company, Inc.** by John R. Ramun, President and Louise B. Ramun, Secretary, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at *Youngstown, OH*, this 3rd day of June, 1992.

*Donald P. Leone*  
-----  
NOTARY PUBLIC

*Prepared by:*  
DONALD P. LEONE, Attorney at Law  
Notary Public — State of Ohio  
My Commission Has No Expiration Date  
Section 147.03 R.C.



**AMENDMENT TO AGREEMENT OF SALE AND  
RECIPROCAL EASEMENT AGREEMENT**

This AMENDMENT, made this 17th day of May, 1993, to the Agreement of Sale dated February 19, 1992, and the Reciprocal Easement Agreement, dated June 3, 1992, between THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY ("P&LE") and ALLIED ERECTING AND DISMANTLING COMPANY, INC. ("Allied").

**TERMS**

WHEREAS, the undersigned parties hereto have agreed to modify and amend the aforementioned agreements;

NOW, THEREFORE, in consideration of the mutual benefits hereinafter set forth, and intending to be legally bound, the parties hereby agree:

1. That Paragraph 15 of the Agreement of Sale shall be modified and amended to as follows:

P&LE and its successors grant to Allied Erecting and its successors the first right of refusal to purchase, for a consideration of \$75,000.00 in cash upon terms and conditions subject to this agreement, that portion of P&LE's main line including land, rail and materials thereon, located between the boundary line where the properties of P&LE and Consolidated Rail Corporation adjoin at Survey Station 45+00+ in the City of Struthers, Ohio, and Survey Station 153+00+ in the City of Youngstown, Ohio, said portion of main line being partially adjacent to Parcels A, B, C and D on the plan attached hereto, in the event the main line is relocated or abandoned, or the balance of the main line west and north of Survey Station 153+00+ is sold to the City of Youngstown, Ohio. Such right of first refusal shall be subject to (i) exercise by Allied's acceptance in writing within 10 days of receipt of written notice from P&LE to Allied issued anytime after the occurrence of either of the events specified hereinabove, whereupon Allied shall accompany its acceptance with a ten percent (10%) earnest money deposit to be followed by payment of the balance of the purchase price at closing to be held no later than 30 days from Allied's exercise of the right of first refusal granted herein, and (ii) a grant for a consideration of \$10 per year, to be

conveyed at the closing, from Allied to P&LE, or their  
its successors and assigns, of a perpetual,  
non-exclusive easement over that portion of the  
main line acquired by Allied between Survey Station  
45+00+ to a connection with the former Youngstown  
& Southern Railway in the vicinity of Survey Station  
136+00+ for the sole purpose of providing railroad  
operations thereover.

2. That Paragraph 6 of the Agreement of Sale and the  
Reciprocal Easement Agreement shall be modified and amended  
to provide that the referenced Rights of Way and/or Easements  
granted by Allied to P&LE shall cease and terminate if, and  
only if, use of the main railroad line shown on the print  
attached to the Agreement of Sale is discontinued by P&LE or  
the line is sold or transferred to any third party or  
successor entity.

3. P&LE and its successors grant to Allied Erecting and  
its successor the first right of refusal to purchase the  
Track Materials only consisting of all rail, O.T.M., R.R.  
ties, and salvagable ballast (slag) thereon located between  
Survey Station 153+00± and Survey Station 424+00± (Trumbull  
County/Mahoning County line) for the consideration of  
\$100,000.00 cash or certified check payable at time of  
closing and subject to the terms and conditions of this  
agreement. P&LE and its successors grant to Allied  
Erecting and its successors two years from the date of  
payment to remove the Track Material from the site.

Other than as modified above, the balance of the terms  
and conditions of the Agreement of Sale and Reciprocal

Easement Agreement remain in full force and effect and there is no other written or oral understanding or agreement that is not expressly set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Agreement of Sale to be executed this 17th day of MAY, 1993.

Sworn to and subscribed before me this 17th day of MAY, 1993

*Lucille M. Mazocco*  
Notary Public



LUCILLE M. MAZZOCCA, NOTARY PUBLIC  
STATE OF OHIO  
COMMISSION EXPIRES DECEMBER 9, 1996

ALLIED ERECTING AND DISMANTLING  
COMPANY, INC.

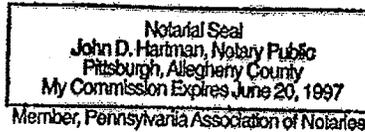
WITNESS:

*Edward L. Selgwick*

By: *John R. Ramun*  
John R. Ramun  
Title: President

Sworn to and subscribed before me this day of MAY, 1993

\_\_\_\_\_  
Notary Public



THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY

WITNESS:

*Gordon E. Neuenschwander*

By: *Gordon E. Neuenschwander*  
Gordon E. Neuenschwander  
Title: President

RECORDED FOR RECORD  
AT 1:07 P.M. 11/10/93

036374

OFF REC 2080 PAGE 53  
This Conveyance has complied with Section 319.22

Fee \$ 75.<sup>00</sup> Receipt # 4573

Permissive Tax 225.<sup>00</sup>

Exempt 11-10-93

NOV 10 1993

\$ 38.<sup>00</sup>

BRUCE E. PAVILLA  
Recorder, Mahoning County, Ohio

LIMITED WARRANTY DEED *R. Jackson* Deputy  
GEORGE J. TACK, COUNTY AUDITOR

THAT, PITTSBURGH & LAKE ERIE PROPERTIES, INC., formerly known as The Pittsburgh and Lake Erie Railroad Company, a Delaware Corporation, successor in interest by merger of The Lake Erie and Eastern Railroad Company, the Grantor, who claims title by and through various instruments recorded in the Mahoning County Recorder's Office for the consideration of Ten Dollars (\$10.00) and other valuable consideration, paid, grants with limited warranty covenants to ALLIED ERECTING AND DISMANTLING COMPANY, INC., an Ohio Corporation, the Grantee, whose mailing address will be <sup>mailing</sup> 2100 Poland Avenue, Youngstown, Ohio, 44502, the following premises situated in the City of Struthers and the City of Youngstown, Mahoning County, Ohio, known as all or part of Out Lots Nos. 1630, 1217, 1215, 561, 571, 574, 577 and 559, and more particularly bounded and described as follows:

Parcel 1

BEGINNING at a Point of Beginning on the northerly boundary line of the Grantor's property, which point is located from the south west corner of City lot 5903 a distance of 2.10 feet ± south along the westerly line of City Lot 5904 to the Grantor's northerly property line and thence northwesterly along Grantor's northerly property line 70 feet to the said Point of Beginning, such Point being indicated on Plate Map 40 of the Mahoning County Tax Maps, a copy of which, marked Exhibit A, is attached hereto and incorporated herein; thence in a southwesterly direction at a right angle to the northerly boundary line of the Grantor's property a distance of 70 feet more or less to a point on the southerly line of the Grantor's property; thence along the southerly line of the Grantor's property as follows: (1) southeasterly 140 feet more or less to a point on the westerly line of City Lot 5905; (2) southeasterly 67 feet more or less along the westerly line of City Lot 5905 and the northerly boundary line of property of the former P.Y. & A. Ry. (now Conrail) Canfield Branch; thence along the dividing line between the Grantor's property and property of the former P.Y. & A. Ry. (now Conrail) Canfield Branch in the arc of a curved line to the right having a radius of 1940.1 feet, a distance of 723.4 feet to a point on the southerly boundary line of the Grantor's property; thence continuing along the southerly boundary line of the Grantor's property as follows: (1) southeasterly 343.7 feet; (2) southwesterly 106.47 feet; (3) southeasterly 108.45 feet along the dividing line between the Grantor's property and the property of the former P.Y. & A. Ry. (now Conrail) Canfield Branch; (4) northerly 140 feet more or less; (5) thence southeasterly 1192.5 feet along the southerly boundary line of the Grantor's property to a point common on the southerly boundary line of the Grantor's property and the westerly line of property of the former P.Y. & A. Ry. (now Conrail) Canfield Branch; thence along dividing line between the Grantor's property and the property of the former P. Y. & A. Ry. (now Conrail) Canfield Branch southeasterly 314 feet to a point on the northerly boundary line of the Grantor's property; thence northwesterly along the northerly boundary line of Grantor's property a distance of 2748 feet to the Point of Beginning, containing 5.8 acres more or less.

EXHIBIT

B

tabbles

Parcel 2

BEGINNING at a Point of Beginning on the southerly line of the Grantor's property, which Point is located as follows from the point of intersection of the northerly line of Poland Avenue and the centerline of Powers Avenue (now vacated); northeasterly 123 feet along the center line of Powers Avenue to a point common to property of the Grantee and property of the former P.Y. & A. Ry. (now Conrail) Canfield Branch, and thence southeasterly 64 feet along the dividing line between property of the Grantee and property of the former P.Y. & A. Ry. (now Conrail) Canfield Branch to the aforesaid Point of Beginning, such Point being indicated on Plate Map 45 on the Mahoning County Tax Maps, a copy of which, marked Exhibit B, is attached hereto and incorporated herein; thence along the southerly line of the Grantor's property, said line also being the dividing line between the Grantor's property and the property of the Grantee, as follows: (1) southeasterly 508 feet; (2) northeasterly 30 feet; (3) southeasterly 3235 feet; (4) southwestly 112 feet more or less; thence in the dividing line between property of the Grantor and the property now or formerly of Ohio Water Service the following two courses and distances: (1) southeasterly 101 feet more or less; (2) southwestly 60 feet to a point on the northerly line of State Street; thence along the northerly line of State Street, also being Grantor's southerly property line, southeasterly 1843 feet more or less; thence in the dividing line between the Grantor's property and the property now or formerly of the Buckeye Land Company the following 3 courses and distances: (1) southeasterly 155 feet; (2) southeasterly 325 feet, (3) southwestly 27 feet to a point on the northerly line of State Street; thence southeasterly along the northerly line of State Street, also being Grantor's southerly property line, 1845 feet; thence in a northeasterly direction at a right angle to said southerly property line 63 feet to the Grantor's northerly property line; thence along said northerly property line being the dividing line between the Grantor's property and the property of the former P.Y. & A. Ry. (now Conrail) in a northwest direction the following nine courses and distances: (1) northwestly 276 feet more or less; (2) northeasterly 9 feet; (3) northwestly 600 feet more or less; (4) northwestly in a curved line to the right 784 feet more or less; (5) northwestly 640 feet; (6) southeasterly 45 feet more or less; (7) southwestly 14.61 feet; (8) northwestly 309.62 feet; (9) northwestly 623 feet more or less; thence southwestly 120 feet more or less in the dividing line between Grantor's property and the property of Grantee, thence northwestly along Grantor's northerly property line, also being the dividing line between Grantor's property and property of the Grantee, 710 feet more or less to a point on the easterly line of the former P.Y. & A. Ry. (now Conrail) Canfield Branch; thence northwestly along said easterly line of former P.Y. & A. Ry. (now Conrail) Canfield Branch, 155 feet more or less to the Point of Beginning, containing 16.0 acres more or less.

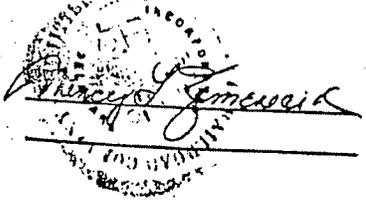
RESERVING, however, to Grantor, its successors and assigns, a certain non-exclusive easement, solely for the purpose of continuing the operation of a railroad over the main line located upon that portion of the above granted and bargained premises between the southeasterly end of Parcel 2 described above (Survey Station 45+00±) and the point of connection with the Youngstown & Southern Railway (Survey Station 136+00±), along the southerly boundary of Parcel 1 described above, a distance of approximately 1.913 miles, all in accordance with the terms of that certain Easement Agreement granted by Grantee to Grantor, its successors and assigns, bearing the same date as this Deed;

BEING all or part of the same property acquired by the Grantor or a predecessor of Grantor, as set out in the deed books and pages, recorded in the Office of Public Records of Mahoning County, Ohio, set forth on Exhibit C, attached hereto and incorporated herein; LESS any interim conveyances of parcels or parts of parcels to third parties, including the Grantee, since the date(s) of acquisition, as listed on Exhibit C-1 attached hereto and incorporated herein.

TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto the said Grantee, its successors and assigns forever. And the said Grantor does for itself and its successors and assigns covenant with Grantee, its assigns and successors, that the granted premises is free from all encumbrances made by the Grantor, and it does warrant and will defend the same to the Grantee and its assigns and successors, forever, against the lawful claims and demands of all persons claiming by through, or under the Grantor, but against none other, EXCEPT that this conveyance is subject to that certain Easement granted by Grantor to Litel Telecommunications Corporation, now known as LCI International Worldwide Telecommunications, and all other easements, reservations, restrictions, and conditions of record as shown on print of plan dated February 2, 1992 or disclosed to Grantee by Grantor; roadway from and to Poland Avenue, shown in color orange on aforesaid print of plan; all applicable zoning and building ordinances; all public highways, roads and streets; and all tax assessments which are a lien on the premises on the date hereof, but which are not yet due and payable; and such matters as would be disclosed by an accurate survey of the premises.

IN WITNESS WHEREOF, said Corporation sets its hand and corporate seal in Pittsburgh, Pennsylvania this 10TH day of November, 1993.

SIGNED IN THE PRESENCE OF:

  
*James J. Gemmill*

PITTSBURGH & LAKE ERIE PROPERTIES, INC., formerly known as The Pittsburgh & Lake Erie Railroad Company

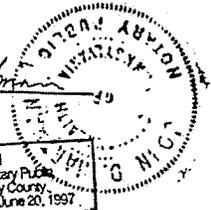
By: *Harold E. Henschel*  
President

STATE OF PENNSYLVANIA )  
 ) S.S.  
COUNTY OF ALLEGHENY )

Before me, a Notary Public in and for said County and State, personally appeared GORDON E. NEUENSCHWANDER, who acknowledged himself to be President of Pittsburgh & Lake Erie Properties, Inc., formerly known as The Pittsburgh and Lake Erie Railroad Company, a corporation, and that he did sign the foregoing Limited Warranty Deed, and that the same is his free act and deed.

In TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Allegheny County, Pennsylvania, this 10<sup>th</sup> day of November 1993.

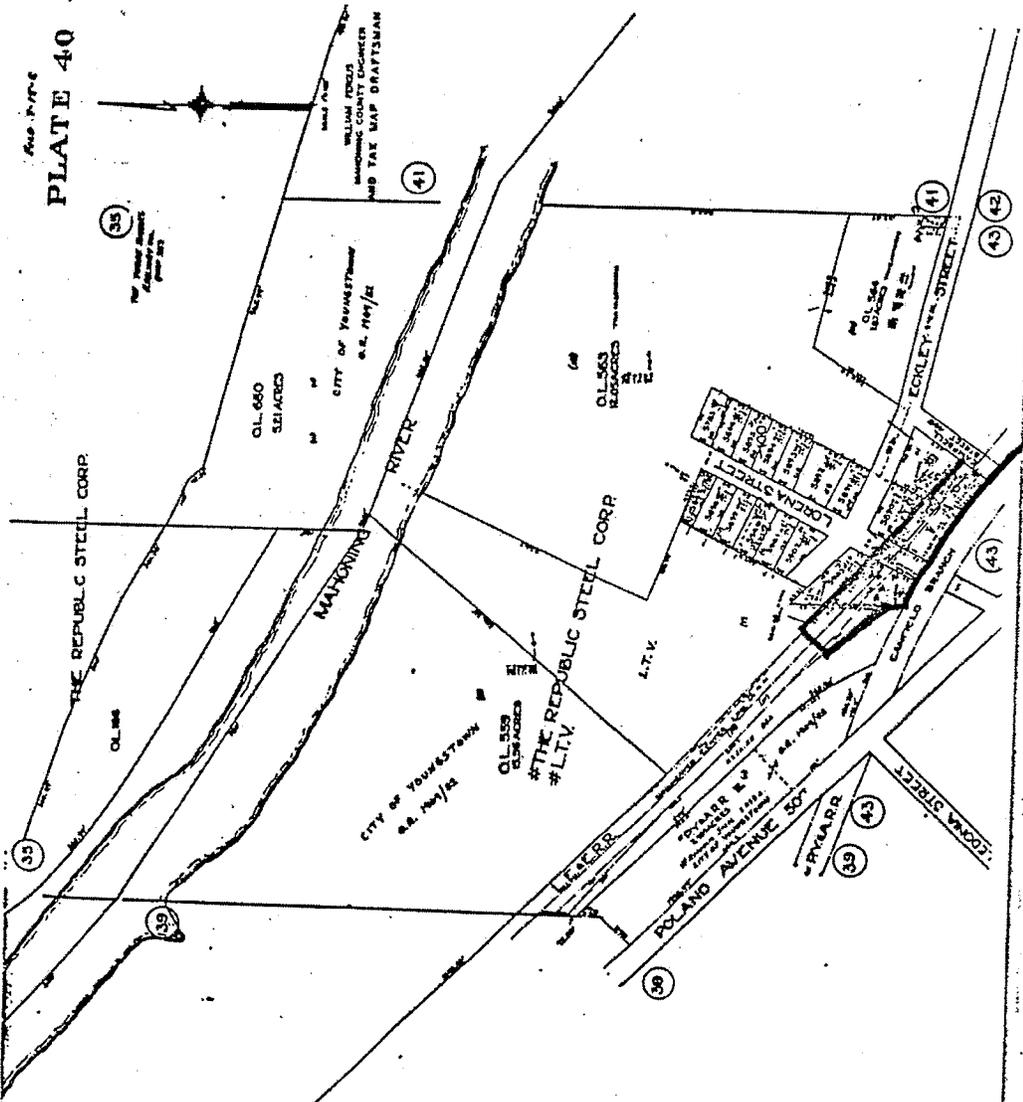
*John D. Heitman*  
NOTARY PUBLIC



Notarial Seal  
John D. Heitman, Notary Public  
Pittsburgh, Allegheny County  
My Commission Expires June 20, 1997  
Member, Pennsylvania Association of Notaries

EXHIBIT A

PLATE 40



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Petitioners' Rebuttal was served upon the following counsel by email, this 16th day of March, 2011.

C. Scott Lanz, Esquire  
Thomas Lipka, Esquire  
Manchester, Bennett, Powers & Ullman  
Atrium Level Two  
The Commerce Building  
201 East Commerce Street  
Youngstown, Ohio 44503

Eric M. Hocky, Esquire  
Thorp Reed & Armstrong, LLP  
One Commerce Square, Suite 1000  
2005 Market Street  
Philadelphia, Pennsylvania 19103



---

Jacob C. McCrea, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower, 44<sup>th</sup> Floor  
600 Grant Street  
Pittsburgh, Pennsylvania 15219

*Attorney for Petitioners  
Allied Erecting and Dismantling Co., Inc. and  
Allied Industrial Development Corporation*