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SEP 12 2011

BEFORE THE SURFACE TRANSPORTATION BOARD

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**SURFACE
TRANSPORTATION BOARD**

FINANCE DOCKET NOS.: 34997 and 35245

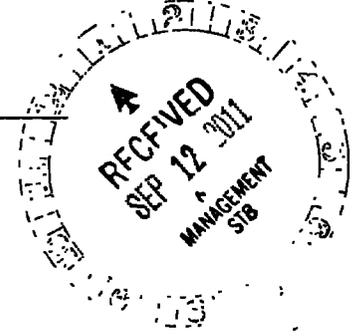
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SEP 12 2011

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PETITIONS OF JAMES RIFFIN

FOR DECLARATORY ORDERS



CONSOLIDATED PETITIONS TO REOPEN

1. Petitioner, James Riffin, ("Riffin" or "Petitioner"), respectfully petitions the Surface Transportation Board ("Board"), pursuant to 49 CFR 1115.4, to reopen the above entitled proceedings, and in support thereof states:

2. Since the above two proceedings are intertwined and are based on the same essential fact, the Petitioner has elected to file this Consolidated Petitions to Reopen. By filing consolidated petitions to reopen, the Board's resources will be used more efficiently.

3. **FD 34997:** In *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 34997, ("FD 34997"), Riffin asked the Board to issue a declaratory order holding that Riffin's construction activities at his Cockeysville maintenance-of-way ("MOW") facility and Riffin's maintenance-of-way activities on his Allegany Rail Line¹, were preempted from local and State regulation pursuant to 49 U.S.C. 10501(b) (2) and (1), respectively. In a **July 13, 2011** decision, the Board held that since it had previously held (in FD 35245, Served September 15, 2009), that Riffin was not a 'rail carrier,' due to Riffin not having a 'suitable legal interest' in the Allegany Rail Line, Riffin's activities could not be subject to the Board's exclusive jurisdiction, since only activities by a 'rail carrier' are subject to the Board's jurisdiction. Op. at 4.

4. **FD 35245:** In *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 35245 ("FD 35245"), Riffin asked the Board to issue a declaratory order holding that Riffin

¹ See *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served August 18, 2006).

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became a rail carrier on August 18, 2006, when the Board granted Riffin authority to acquire and operate the Allegany Rail Line². Riffin also asked the Board for authority to acquire and operate the Veneer Spur as an additional line of railroad. In a decision served on September 15, 2009 (“September 15, 2009 Decision”), the Board held that Riffin was not a ‘rail carrier’ since “Riffin does not appear to be capable of providing service over the Allegany line at this time as he does not own the line or have any other suitable legal interest in it that gives him the ability to exercise the authority the Board has granted.” Op. at 6. This decision was based on the premise that Riffin did not “own” or have “any other suitable legal interest” in the Allegany Rail Line, since CSX had erroneously deeded the Line to WMS LLC, a Maryland Limited Liability Company that Riffin owned. (The record was clear that Riffin paid the full purchase price for the Allegany Rail Line.) The Board further held in the September 15, 2009 decision that since it had held that Riffin was not a ‘rail carrier,’ his acquisition of the Veneer Spur would not constitute the acquisition of an ‘additional’ line of railroad.

CRITERIA TO REOPEN A PROCEEDING

5. 49 CFR 1115.4 states:

“A person at any time may file a petition to reopen any administratively final action of the Board pursuant to the requirements of §1115.3 (c) and (d) of this part. A petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Board make such a determination.”

NEW EVIDENCE / SUBSTANTIALLY CHANGED CIRCUMSTANCES

6. Appended hereto is a transcript of the Court’s³ February 16, 2011 ruling, wherein the Court made the following findings of facts and conclusions of law:

² *Id.*

³ U.S. Bankruptcy Court for the District of Maryland, Baltimore Division, in *In re: James Riffin*, Case No. 10-11248.

- A. "But the real issue is whether or not there is property of the estate to be sold. This question, in turn, is governed by Section 541 of the Bankruptcy Code, which section provides that all legal and equitable interests of the debtor, as of the commencement of the bankruptcy case, become property of the bankruptcy estate." T. p. 4, L. 4-9.
- B. "The board denied the motion to compel.⁴ It did not do so by finding as to whom had the right to be the grantee or owner of the line. It made no such finding. Instead, it denied it because the board found that the issue of who had contract rights under the purchase agreement and could enforce that agreement were matters of state contract and real estate law, and that should be left to the state courts to decide." T. p. 9, L. 19-25.
- C. "Property interests, even in a bankruptcy case, are not determined by bankruptcy law and generally are determined by applicable state law, under the decision of the United States Supreme Court in *Butner v. United States*, found at 440 U.S. 48, a 1979 opinion. The real estate of this line and personalty located thereupon are in the state of Maryland, and are hence governed by Maryland law.

Maryland recognizes the rights of a contract purchaser of real estate as a form of equitable title. **Upon delivery and acceptance of a contract, the buyer acquires equitable title which right may have a priority over subsequently recorded judgments against the seller, and which right entitles the buyer to acquire legal title by performance of the contract. Usually, this performance is payment of the price.**" T. p. 11 L. 22 to p. 12, L. 10. Bold added.

- D. "But Mr. Riffin did not acquire the requisite legal title to the line. Instead, perhaps in error, CSX delivered a deed to Mr. Heffner in which WMS was the grantee, notwithstanding that CSX had agreed to the substitution of the purchaser. CSX's agreement is contained in the exhibits in evidence. That deed, the one to WMS, has never been recorded. And hence, under the Real Property Article, the Annotated Code of Maryland, Section 3-101, **title has not been conveyed to WMS.**" T. p. 13, L. 1 - 8. Bold added.
- E. "The [U.S.] circuit court [District of Columbia Circuit] affirmed the board's finding that the board was not the proper venue to enforce the issue of equitable title, and hence would not compel CSX to reissue the deed. It did not decide the issue of who held such rights. It expressly so stated, finding that those rights were a matter of contract and real estate law and best left to the state courts." T. P. 15, L. 23 to p. 16, L. 4.

⁴ See *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X), Filed January 14, 2008.

- F. “The trustee is not, in this action, seeking to sever the common carrier rights, or reserve, or keep them or otherwise separate them from their association with the line.” T. p. 17. L. 15-17.
- G. “The rights are associated, and if the acquirer both acquires legal title to the property and is approved by the board as a responsible person for that line, then those facts apparently create the status and legal rights of a common carrier over that line, such status and rights never having been abandoned. And so the trustee has not withheld from the sale or admitted somehow in his statement that there are no common carrier rights that will go along with the sale.” T. p. 17, L. 23 to p. 18, L. 5.
- H. **“The old deed [from CSX to WMS LLC] ... is void. It appears it was likely issued in error in the first place.”** T. p. 22, L. 11 - 13. Bold added.

7. The salient findings of facts and law, are:

- A. The deed from CSX to WMS LLC is void, and was issued in error. ¶ 6 H.
- B. WMS LLC **never acquired legal title** to the Allegany Rail Line. ¶ 6 D.
- C. Upon execution of the Purchase Agreement (March 1, 2006, T. p. 7, L. 14-15), Western Maryland Services LLC acquired equitable title to the Allegany Rail Line. Upon execution of the Substitution Agreement (June 6, 2006, T. p. 8, L. 17), wherein CSX agreed to substitute Riffin as the Purchaser, Riffin acquired all of Western Maryland Services’ rights. Upon full payment of the purchase price (June 20, 2006,), Riffin obtained the right to legal title to the Allegany Rail Line. ¶ 6 C.
- D. The common carrier rights associated with the Line have never been abandoned. ¶6G.
- E. Riffin’s bankruptcy estate acquired all of the equitable and legal rights Riffin possessed as of the date he filed his bankruptcy petition. T. p. 4, L. 4-9.
- F. Riffin’s bankruptcy trustee obtained authority from the Bankruptcy Court to transfer all of Riffin’s rights in the Allegany Rail Line, including Riffin’s common carrier rights, ¶ 6 F and 6 G, to the 1830 Group LLC. T. p. 22, L. 17-18.

ARGUMENT

8. When the Board made its September 17, 2009 decision, it had not been determined, as a matter of law, who actually owned the Allegany Rail Line. The only evidence of title was a deed from CSX to WMS LLC. Based on this deed, the Board **erroneously concluded** that the Allegany Rail Line was owned by WMS LLC, not by Riffin, and that Riffin did not have a 'suitable legal interest' in the Line.

9. When the Board made its July 13, 2011 decision, a copy of the transcript of the Bankruptcy Court's February 16, 2011 ruling was not in the record before the Board. Consequently, the Board continued to **erroneously believe** that Riffin did not have a 'suitable legal interest' in the Allegany Rail Line.

10. The Bankruptcy Court considered in detail the sequence of events from the date CSX filed its Abandonment Exemption to the date Riffin filed his bankruptcy petition (January 20, 2010). The bankruptcy court then applied Maryland's real property law to the facts before the bankruptcy court. In applying Maryland's law to the facts before the Court, the bankruptcy court held:

- A. Western Maryland Services LLC acquired equitable title to the Line on March 1, 2006, the date the Purchase Agreement was executed.
- B. Riffin acquired all of Western Maryland Services' rights on June 6, 2006, the date CSX agreed to substitute Riffin as the purchaser of the Line.
- C. Riffin acquired the right to obtain legal title to the Line on June 20, 2006, the date Riffin wired the balance of the purchase price to CSX.
- D. On August 16, 2006, the date the Board authorized Riffin to acquire and operate the Allegany Rail Line, the common carrier rights associated with the Line were transferred to Riffin.
- E. The July 10, 2006 deed from CSX to WMS LLC was issued in error, and was held to be void.

F. On January 20, 2010, the date Riffin filed his bankruptcy petition, Riffin had equitable title to the Allegany Rail Line, had the right to obtain legal title to the Line, and had the common carrier rights associated with the Allegany Rail Line. All of these rights transferred to Riffin's bankruptcy estate on January 20, 2010.

G. On February 16, 2011, the bankruptcy court approved the sell of all of Riffin's rights in the Allegany Rail Line, including his common carrier rights.

11. The findings of facts, conclusions of law, and transcript of the bankruptcy court's February 16, 2011, constitute 'new evidence' or 'substantially changed circumstances,' and / or establish that the Board's September 15, 2009 decision involved 'material error.'

12. **WHEREFORE**, Riffin would ask that the Board:

A. Make a determination that the FD 34997 and 35245 proceedings involve "material error, new evidence, or substantially changed circumstances."

B. **Reopen FD 35245**, then adopt the bankruptcy court's findings, namely that:

(a) Western Maryland Services LLC acquired equitable title to the Allegany Rail Line on March 1, 2006, the date CSX approved the Purchase Agreement;

(b) Riffin acquired all of Western Maryland Services LLC's rights, including equitable title to the Allegany Rail Line, on June 6, 2006, the date CSX approved the Substitution Agreement, agreeing to substitute Riffin as the purchaser of the Allegany Rail Line;

(c) On August 16, 2006, CSX's common carrier obligations associated with the Allegany Rail Line were transferred to Riffin;

(d) The deed from CSX to WMS LLC has been held to have been issued in error and has been held to be void; and

(e) WMS LLC has never had legal title to the Allegany Rail Line.

C. Reopen FD 35245, vacate the Board's finding that Riffin did not have a 'suitable legal interest to provide common carrier service' on the Allegany Rail Line, then determine:

(a) CSX was the rail carrier prior to March 1, 2006, the date Western Maryland Services LLC acquired equitable title to the Line;

(b) Who was the rail carrier from March 1, 2006, until August 16, 2006;

(i) Western Maryland Services LLC received authority to acquire and operate the Line on December 14, 2005. It acquired equitable title to the Line on March 1, 2006.

(ii) On June 6, 2006, all of Western Maryland Services LLC's rights in the Line were transferred to Riffin. Riffin had equitable title to the Line.

(iii) On June 20, 2006, Riffin acquired the right to legal title to the Line, having wired the balance of the purchase price to CSX.

(iv) On July 10, 2006, CSX filed its 'consummation of sale' notice with the STB.

(v) On August 16, 2006, Riffin was granted authority to be substituted as the purchaser of the Line.

(c) Who was the rail carrier associated with the Allegany Rail Line from August 16, 2006 until March 17, 2011, the date the sale of the Line to the 1830 Group LLC was reported to the Board.

(d) The Allegany Rail Line has continued to be a line of railroad, and has continued to be subject to the Board's jurisdiction, from March 1, 2006, the date CSX executed a Purchase Agreement for the Line, until the present;

(e) On June 20, 2006, the date Riffin wired the balance of the purchase price to CSX, and the date Riffin acquired the right to obtain legal title to the Line from CSX, Riffin had a 'suitable legal interest' in the Allegany Rail Line sufficient to provide common carrier service on the Line;

(f) Riffin was the common carrier rail carrier associated with the Allegany Rail Line from August 16, 2006 until March 17, 2011, the date the sale of the Line to the 1830 Group LLC was reported to the Board.

D. Reopen FD 34997, vacate the Board's holdings that because Riffin had been found in the September 15, 2009 decision not to be a rail carrier, his activities could not constitute 'transportation by rail carrier,' then determine:

(a) Riffin was the rail carrier on the Allegany Rail Line from August 16, 2006 until March 17, 2011;

(b) Riffin's 'transportation by rail carrier' activities at his Cockeyville properties and on his Allegany Rail Line were subject to the Board's exclusive jurisdiction;

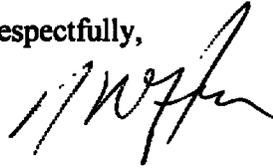
(c) The construction of Riffin's MOW facility on his Cockeyville properties was, pursuant to 49 U.S.C. 10501 (b) (2), subject to the Board's exclusive regulatory authority;

(d) Find that Riffin's acquisition of the Veneer Spur would constitute acquisition of an 'additional line of railroad;'

(e) Grant Riffin authority to acquire and operate the Veneer Spur as an 'additional line of railroad.

E. Grant Riffin such other and further relief as would be appropriate.

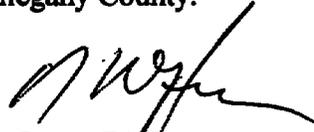
Respectfully,



James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of September, 2011, a copy of the foregoing Petitions for Reopen, was served by first class mail, postage prepaid, upon Norfolk Southern Railway Company, Law Department, Three Commercial Place, Norfolk, VA 23510; and upon Charles Spitulnik, Kaplan Kirsch Rockwell, Ste 905, 1001 Connecticut Ave, N.W., Washington, DC 20036, counsel for MTA, MDOT, MDE and Allegany County.



James Riffin

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P R O C E E D I N G S

1
2 THE DEPUTY: The United States Bankruptcy Court for
3 the District of Maryland now resumes its regular session. The
4 Honorable Chief Judge Duncan W. Keir presiding. Please be
5 seated and come to order.

6 THE COURT: Before the Court is a motion by the
7 Chapter 7 trustee in this case seeking to sell a line of
8 railroad, which I'll describe in a moment, free and clear of
9 all other interests and liens except for those encumbrances
10 which may be upon the property for various utilities actually
11 still in existence. The trustee is not seeking to strip off
12 the land any such rights held by such utilities. The Court has
13 held an evidentiary hearing on this motion over portions of two
14 days and heard final argument from both parties and parties-in-
15 interest today.

16 The trustee seeks to sell the property pursuant to
17 Section 363(b) and (f) of the United States Bankruptcy Code.
18 The requisite statute provides in part as follows, that the
19 trustee may sell property under Section 363(b), that is, a sale
20 of property of the estate, free and clear of any interest in
21 the property, if such interest is in bona fide dispute. That
22 is one of the five alternative subsections of 363(f).

23 Anyone who has read all the pleadings and listened to
24 all of the evidence and argument, as this Court has, certainly
25 would have to find that there's a bona fide dispute that has

1 existed and may still exist as to who holds what interests
2 precisely in this line of railroad. Therefore that subsection
3 of the Code is satisfied.

4 But the real issue is whether or not there is property
5 of the estate to be sold. This question, in turn, is governed
6 by Section 541 of the Bankruptcy Code, which section provides
7 that all legal and equitable interests of the debtor, as of the
8 commencement of the bankruptcy case, become property of the
9 bankruptcy estate. There are some exceptions in 541 not
10 applicable to this case. 541, in 1979, when it became
11 effective, was a dramatic departure from prior law under the
12 Bankruptcy Act of 1898, as to how property of the bankruptcy
13 estate was to be defined and applied.

14 Congress, in the Bankruptcy Reform Act of 1978, which
15 became effective in 1979, repealed in its entirety the 1898
16 act. Under the 1898 act, there was by statute certain tests
17 applied as to property to determine whether or not it became
18 property to be administered in a Chapter -- in what was then
19 known as a "straight bankruptcy", which is analogous or the
20 predecessor to a Chapter 7.

21 The change was, instead, the law now recognizes that a
22 person -- person is defined in the Bankruptcy Code as either an
23 individual or an entity -- may hold interests in assets without
24 holding all of the interests. A very common example of that is
25 an individual or entity that is entitled to real property which

1 real property subsequently has on it a deed of trust. Under
2 Maryland law, a deed of trust conveys legal title to the lender
3 or to the trustees for the benefit of the lender. And what the
4 "owner" retains is an equitable right in the property. And yet
5 if that owner files bankruptcy, clearly the owner's right in
6 the property becomes part of the owner's bankruptcy estate.

7 Moving to the facts in this case. CSX Transportation,
8 which for shorthand I will refer to as CSX -- and I don't mean
9 by doing so to mix up the corporate entities -- owned the land
10 and track and other infrastructure and operated as a common
11 carrier by rail a line of track in Allegany County, Maryland,
12 from Western Port to end of line at Carlos. The northern
13 portion of that line from Morrison to Carlos, had not been used
14 for some years prior to the events in question in this action.
15 The trackage remained in place but was then, and is now, in a
16 state of some disrepair.

17 As Mr. Strohmeier, I think correctly argued,
18 generally, a common carrier by rail cannot simply stop usage of
19 a line and permanently remove infrastructure or sell off the
20 land and personally for some noncarrier use without some
21 proceeding to abandon it. In order to be authorized to abandon
22 the operation of the line, the carrier must file the requisite
23 request with the Surface Transportation Board. I'll refer at
24 times in my findings to that board as perhaps "the board" or
25 STB.

1 CSX filed the required document to abandon the
2 Morrison to Carlos line -- and from now on I'll just call that
3 "the line". And they filed that in August of 2005. Under
4 applicable law, other persons may seek the authority from the
5 board to acquire the line sought to be abandoned, and
6 thereafter operate it as a carrier. They file with the board a
7 document known as an Offer of Financial Assistance.

8 On September 8, 2005, an attorney, John Heffner, wrote
9 to the board, submitting an expression of interest on behalf of
10 "WMS, LLC" ("WMS"). See Trustee's Exhibit 1. On October 21,
11 2005, Mr. Heffner filed with the board the requisite Offer of
12 Financial Assistance on behalf of this described entity,
13 Trustee's Exhibit 2. Now, on page 2 of that document, WMS is
14 stated to be "a Maryland Limited Liability Company established
15 by Gerald Altizer and chartered in West Virginia", a seeming
16 inconsistency within one sentence. And I think some confusion
17 perhaps began from that point of beginning.

18 At the time of this document's filing, there was no
19 Maryland Limited Liability Company under the name WMS. Mr.
20 Altizer's West Virginia LLC was Western Maryland Survivors,
21 sometimes apparently referred to in shorthand, so to speak, as
22 WMS. See the last page of Trustee's Exhibit 2.

23 Trustee's Exhibit 4 shows that Western Maryland
24 Survivors LLC, as formed in 2002, underwent a name change in
25 West Virginia in 2006, and the name was changed to Western

1 Maryland Services, LLC. On the last page of the document
2 demonstrating that, there's a handwritten notation, "WMS, LLC",
3 and a certificate from the Secretary of West Virginia,
4 "Includes the (WMS, LLC) in the name" all as part of that
5 exhibit.

6 On December 13, 2005, the Surface Transportation Board
7 recited in a decision that as of October 2005, the board had
8 decided that WMS was financially responsible, and subsequently
9 had -- that WMS had subsequently agreed as to a price to
10 purchase the line from CSX. Accordingly, in that document,
11 that is the December 13, '05 decision, the board approved the
12 sale and authorized WMS to operate the line. Trustee's Exhibit
13 5.

14 On March 1, 2006, CSX entered into a contract with
15 "WMS, Inc., a West Virginia LLC" to sell the property. This is
16 Trustee's Exhibit 6. And by a subsequent letter agreement of
17 May 24, 2006, the time for a closing on that sale was extended
18 to June 1, 2006. Trustee's Exhibit 7. Meanwhile, Mr. Riffin,
19 now debtor in this case and an opponent of this motion,
20 acquired a ninety-eight percent interest in Western Maryland
21 Services, LLC. Mr. Riffin funded the purchase price to CSX for
22 the line of railroad, initially sending one half of the amount
23 in early June of 2006, and then later sending the rest. This
24 all occurred in 2006.

25 However, Mr. Riffin also decided that he wished to

1 acquire the assets of the line and to operate that line as a
2 carrier in his individual name and capacity. In part, the
3 Court finds that the purpose of Mr. Riffin seeking to become an
4 owner and operator of the line was to acquire the status of a
5 common carrier by rail in his name, so as to bolster his legal
6 arguments to preemption as to county and state land use laws
7 concerning property located in Cockeysville, Maryland. There
8 was ongoing litigation in the state courts, both trial and
9 appellate, and at times, at least briefly, in the United States
10 District Court, concerning that Baltimore County land.

11 Now, in order to achieve that goal, Mr. Riffin also
12 needed to be authorized to be an acquirer of the line for
13 purposes of carrying on the common carrier operations. Mr.
14 Heffner wrote to CSX on June 8, 2006, requesting on behalf of
15 WMS that CSX consent to WMS assigning the contract of sale to
16 Mr. Riffin. CSX accepted that request, agreed to it. See
17 Trustee's Exhibit 9. This happened on June 6, 2006.

18 On June 14, 2006, Mr. Heffner filed with the Surface
19 Transportation Board, a petition by WMS to substitute purchaser
20 under the financial assistance proceeding, which was granted by
21 the board by a decision of August 17, 2006. See Trustee's
22 Exhibits 10 and 14. But before that approval by the Surface
23 Transportation Board, CSX sent to Mr. Heffner transfer
24 documents, including a deed from CSX to WMS, LLC. In that
25 deed, CSX described the grantee as WMS, LLC, a Maryland Limited

1 Liability Company, just as Mr. Heffner had stated in his
2 original offer of financial assistance to the board. This then
3 further clouds, perhaps, or would seem to, the identity of who
4 acquired what. Mr. Riffin, on May 26, 2006, filed articles of
5 organization for a WMS, LLC as a Maryland Limited Liability
6 Company. It appears that that has since lapsed.

7 After learning of the deed and other documents of
8 transfer, on July 12, 2006, Mr. Riffin began an effort to have
9 title transferred to him personally. See Trustee's Exhibit 13.
10 CSC apparently refused to reissue the documents. On July 14,
11 2008 (sic), Mr. Riffin continued his efforts by filing a motion
12 with the board seeking the board to compel by order CSX to
13 execute a deed to Mr. Riffin. It's a little bit ironic
14 perhaps, that it's argued in the proceeding before this Court
15 in this motion by the opposition, that because of the deed from
16 CSX to WMS, LLC, CSX could not re-deed the property. But
17 that's exactly what, at the time in question, Mr. Riffin was
18 seeking.

19 The board denied the motion to compel. It did not do
20 so by finding as to whom had the right to be the grantee or
21 owner of the line. It made no such finding. Instead, it
22 denied it because the board found that the issue of who had
23 contract rights under the purchase agreement and could enforce
24 that agreement were matters of state contract and real estate
25 law, and that should be left to the state courts to decide.

1 Mr. Riffin appealed the board's decision -- see Trustee 20 --
2 to the United States Circuit Court of Appeals for the DC
3 Circuit.

4 On January 22, 2010, after this bankruptcy case was
5 filed and the estate acquired whatever rights Mr. Riffin had in
6 the line, the court of appeals denied Riffin's challenge of the
7 board's refusal to issue the order compelling. It found that
8 the board correctly had determined that its role in the process
9 ended when it approved the transaction, and ended the attempt
10 to abandon.

11 In an obvious effort to again gain some perceived
12 advantage in the litigation concerning the land in Baltimore
13 County, Mr. Riffin petitioned the board to declare that he was
14 a "common carrier". The board denied that request, and again,
15 Mr. Riffin appealed that decision to the Circuit Court of
16 Appeals for the DC Circuit. In its September 2010 term, long
17 after this bankruptcy case was filed, that appellate court
18 affirmed the finding of the board, finding that the petitioner
19 was not a "rail carrier", as the petitioner had not shown he
20 was able to provide rail service over the line in Allegany
21 County.

22 The circuit court of appeals expressly did not
23 determine what rights Riffin had as equitable title or
24 otherwise to the line, nor had the board, in denying this
25 action to seek the status of a rail carrier. What the board

1 decided was that Mr. Riffin was not entitled to the line and
2 could not operate the line. And if he could not operate the
3 line, he could not be found to be a common carrier.

4 Now, of course, at the time of this decision, the
5 bankruptcy case having been filed, if Mr. Riffin had any
6 equitable interests in the line, such interests were now
7 property of the estate. Mr. Riffin's original Schedule C filed
8 in the bankruptcy case did not seek to exempt any such
9 interest. But amended exemptions by amended Schedule C were
10 filed on September 27, 2010, in which Mr. Riffin asserted a
11 one-dollar exemption in the equitable rights, but further
12 stated that he claimed as exempt all of any value of a series
13 of actions which seemed to include these equitable rights.

14 The trustee filed an exemption to the allowance -- or
15 the trustee filed an objection to the allowance of the
16 exemption. And on January 19, 2011, this Court sustained the
17 objection, limiting Mr. Riffin's exemption in the equitable
18 rights in the line, if any, to the one-dollar value claimed,
19 applying expressly this Court's -- not this Court -- the United
20 States Supreme Court's decision in Schwab v. Reilly, found at
21 130 S. Ct. 2652 a decision of June 2010.

22 Property interests, even in a bankruptcy case, are not
23 determined by bankruptcy law and generally are determined by
24 applicable state law, under the decision of the United States
25 Supreme Court in Butner v. the United States, found at 440 US

1 48, a 1979 opinion. The real estate of this line and
2 personally located thereupon are in the state of Maryland, and
3 are hence governed by Maryland law.

4 Maryland recognizes the rights of a contract purchaser
5 of real estate as a form of equitable title. Upon delivery and
6 acceptance of a contract, the buyer acquires equitable title
7 which right may have a priority over subsequently recorded
8 judgments against the seller, and which right entitles the
9 buyer to acquire legal title by performance of the contract.
10 Usually, this performance is payment of the price.

11 The initial contract was between Western Maryland
12 Survivors, LLC, referred to perhaps inartfully as WMS, but
13 clearly the only entity that both existed and intended to buy
14 at that time. Before delivery of the deed conveying legal
15 title, the buyer, Western Maryland Survivors, LLC, now
16 controlled by Mr. Riffin, assigned its interest as buyer to the
17 right to acquire, i.e., equitable title, to Mr. Riffin. See
18 Trustee's Exhibit 9.

19 Mr. Riffin wanted to acquire it, as I've stated, so
20 that he could become the operator of the line. To do that, of
21 course, he had to be approved by the transportation board and
22 he subsequently -- or he did, in fact, apply as an affiliate of
23 Western Maryland Survivors, and was found by the board to be a
24 financially responsible party, and thereupon authorized to
25 acquire the line to operate it as a common carrier.

1 But Mr. Riffin did not acquire the requisite legal
2 title to the line. Instead, perhaps in error, CSX delivered a
3 deed to Mr. Heffner in which WMS was the grantee,
4 notwithstanding that CSX had agreed to the substitution of the
5 purchaser. CSX's agreement is contained in the exhibits in
6 evidence. That deed, the one to WMS, has never been recorded.
7 And hence, under the Real Property Article, the Annotated Code
8 of Maryland, Section 3-101, title has not been conveyed to WMS.
9 I'm going to come back to this issue of real property law
10 further. But let me continue with the timeline.

11 Mr. Riffin subsequently filed this bankruptcy case.
12 And as I've stated, under Section 541(a), his equitable title
13 and assignment of rights as grantee under the contract with
14 CSX, became property of the bankruptcy estate. Even if the
15 deed that CSX delivered, made to WMS, was susceptible to
16 conveying some interest, which appears inconsistent with CSX's
17 agreement to the assignment of the buyer's rights to Mr.
18 Riffin, such unrecorded deed, while under state law,
19 enforceable by the part -- against the parties, i.e., from
20 buyer to seller, is subject to the trustee's rights in
21 bankruptcy, as a hypothetical bona fide purchaser without
22 notice under Section 544 of the Bankruptcy Code. In Maryland,
23 such a bona fide purchaser would take rights in the property
24 superior to the unrecorded deed.

25 For these reasons, the Court finds that there

1 definitely is in the bankruptcy estate an equitable title
2 interest in the line. And this then satisfies the requirement
3 of Section 363(f) that the sale be one described in Section
4 363(b) of estate property. Because the other provision of
5 363(f) that there is a bona fide dispute as to the rights of
6 the various parties to this property, including under these
7 bills of sale, 363(f) is satisfied, and the trustee is
8 authorized to sell property free and clear of those other
9 interests. But those interests should attach to the proceeds.

10 Now, both Mr. Riffin and Mr. Strohmeyer argue that
11 somehow *res judicata* and perhaps collateral estoppel bar this
12 decision. Both Mr. Riffin and Mr. Strohmeyer appear to believe
13 that their experience and Mr. Riffin's graduation from law
14 school have given them great insight, perhaps, into legal
15 theory. But they are misguided in this conclusion. Indeed as
16 a footnote, perhaps, there is some evidence that each of these
17 two gentlemen may have intruded into the area of practice of
18 law in providing advice to others or drafting legal documents.
19 But that's not a matter this Court passes upon today.

20 *Res judicata*, when given its narrow definition, is a
21 doctrine of matter preclusion. If the exact same matter
22 between the parties has been decided by a court of competent
23 jurisdiction, commensurate with constitutional guarantees of
24 due process, and it is by final judgment, then the matter may
25 not be retried by some other court. The matter of whether or

1 not the trustee is empowered or will be authorized to sell
2 rights in the line under 363(b) and (f) clearly has not been
3 before any other tribunal, for no other tribunal would have had
4 subject-matter jurisdiction. Those bankruptcy sections are
5 only applicable in a bankruptcy case, and only a bankruptcy
6 court has jurisdiction to decide them. And the Circuit Court
7 of Appeals for the DC Circuit certainly did not.

8 The other doctrine of preclusion which sometimes
9 courts have loosely referred to as a part of res judicata, but
10 I think more carefully which should be described as collateral
11 estoppel, and which is also raised, including in Mr. Riffin's
12 written argument, is referred to commonly as issue preclusion.
13 If in a prior matter, a court of competent jurisdiction decides
14 an issue by final judgment and the matter was proceeding
15 between the same parties or those in privity, and was actually
16 litigated, and the decision of the issue was necessary to the
17 final judgment of such prior court, the losing party on that
18 issue is precluded from rearguing the issue in a subsequent
19 matter.

20 This is an argument, I think, that Mr. Strohmeyer, in
21 his oral closing argument seeked (sic) to emphasize. What was
22 decided by the board and its subsequent affirmance by the
23 Circuit Court of the District of Columbia Circuit? The circuit
24 court affirmed the board's finding that the board was not the
25 proper venue to enforce the issue of equitable title, and hence

1 would not compel CSX to reissue the deed. It did not decide
2 the issue of who held such rights. It expressly so stated,
3 finding that those rights were a matter of contract and real
4 estate law and best left to the state courts.

5 It cannot be correctly argued that this decision is
6 the basis for issue preclusion. The fact that later in
7 Trustee's Exhibit 50, a subsequent decision, there's a footnote
8 that characterizes the earlier decision of the board, somehow
9 then becomes a basis for issue preclusion, is incorrect. For
10 the court in the subsequent decision was not retrying and did
11 not decide the issue.

12 Similarly, the finding by the Surface Transportation
13 Board, affirmed by the Court of Appeals of the DC Circuit that
14 Mr. Riffin was not entitled to be labeled or found to be a
15 common carrier or a carrier by rail, did not decide that Mr.
16 Riffin had no interests such as equitable title in the line.
17 What the board found was, and it was affirmed, that Mr. Riffin
18 was not authorized at the time he applied for that label, to
19 operate the Allegany Railroad line and therefore he couldn't be
20 found to be a common carrier, finding that he did not have
21 title to the line. He had not been given legal title to the
22 line. But that is not inconsistent with what rights he held
23 for equitable title and which Mr. Riffin had long argued and I
24 think with some correctness he held such equitable rights.

25 Now, today, the offeror of a contract with the trustee

1 has applied to the board and gained approval as a financially
2 responsible person to operate the line if it gains title to the
3 line. CSX has agreed in the settlement agreement that it would
4 reissue a new deed to such acquirer of rights from the trustee,
5 and that would correct and supplant the erroneous deed or at
6 least potentially erroneous deed that was never recorded.

7 Mr. Riffin and Mr. Strohmeier, still attempting to
8 prevent this sale, attempted to argue that the trustee had
9 conceded in a statement that the trustee was not conveying the
10 common carrier rights. That mischaracterizes the testimony.
11 And I went back and I listened to it. What was testified to
12 was that -- let me get this right -- the trustee did not think
13 that he could "convey" common carrier rights. The trustee
14 stated that he thought it was a legal status based on law.

15 The trustee is not, in this action, seeking to sever
16 the common carrier rights, or reserve, or keep them or
17 otherwise separate them from their association with the line.

18 Mr. Strohmeier, I think, was correct when he continues to argue
19 that such rights are associated with the line. The line has
20 not been abandoned. But it's not something the trustee conveys
21 directly. The trustee and this Court doesn't have that
22 unrestricted power to designate someone as a common carrier.

23 The rights are associated, and if the acquirer both
24 acquires legal title to the property and is approved by the
25 board as a responsible person for that line, then those facts

1 apparently create the status and legal rights of a common
2 carrier over that line, such status and rights never having
3 been abandoned. And so the trustee has not withheld from the
4 sale or admitted somehow in his statement that there are no
5 common carrier rights that will go along with the sale.

6 Perhaps a loose analogy to events a little bit more
7 common before this Court would be helpful. Not infrequently,
8 this Court is called upon to approve a sale of estate assets
9 including rights associated with those assets that may be
10 subject to legal regulation by some other body, such as a
11 liquor license. In many jurisdictions, a person owns the
12 liquor license but may not convey the liquor license to anyone
13 else without approval of the Liquor Board. And the Liquor
14 Board then determines whether the acquirer should be able to
15 operate an establishment under the rights of such license.

16 So if this Court, as it sometimes does, approves such
17 sale, it does so subject to the regulatory body determining
18 what the right of acquirer will be to operate under the
19 requisite license. This is a similar situation here.

20 Another argument Mr. Griffin advanced in his oral
21 presentation today was that the trustee conceded that Riffin
22 had no interest in the rail line to convey, pointing to the
23 trustee's statement concerning these bills of sale. It's not
24 what the trustee said. What the trustee said is the bills of
25 sale, the trustee argues, don't convey interests, because they

1 assert that Riffin doesn't really hold any particular described
2 interest. This was the trustee's characterization of what the
3 bills of sale say. It is not what the trustee is conceding or
4 states.

5 Let me deal with a few other issues at least raised in
6 writing if not pursued in argument. Mr. Riffin referred to
7 Section 109(b)(1) of the Bankruptcy Code, and it's not the
8 first time he's made that reference. This section provides
9 that a railroad may not be a debtor in a Chapter 7 case. At
10 times in the past Mr. Riffin has argued, seemingly that if this
11 Court found that there was any interest in the line that he
12 held and that the bankruptcy estate acquired under 541, somehow
13 this was a circuitous disabling of this Court's jurisdiction,
14 because he then wouldn't be eligible to be a debtor and there
15 could be no bankruptcy case, no estate and no trustee powers.

16 He's wrong. It is not Title 49, it's Title 11 of the
17 United States Code that governs eligibility. The use of the
18 word "railroad" in Section 109(b)(1) of Title 11 is with
19 definition in 11 U.S.C. Section 101(44). That definition
20 says -- and I'll read it because it's not very long -- "the
21 term 'railroad' means transferee of a voluntary transfer and
22 includes" -- skipped a line, excuse me. Let me start over.
23 "The term 'railroad' means common carrier by a railroad engaged
24 in the transportation of individuals or property owner of
25 trackage facilities leased by such a common carrier."

1 Mr. Riffin is not a common carrier for the reasons the
2 Surface Transportation Board stated. And therefore he is not a
3 railroad, and there is no lease involved. And so by the
4 definition in the applicable statute, 109(b)(1) is in apposite.

5 The remaining issue under Section 363(b) is whether
6 the Court should approve the sale under its terms. The
7 applicable standard is whether or not the trustee's deal, if
8 you will, the terms of the sale, are within reasonable business
9 judgment of somebody holding the rights the trustee is
10 offering. I find that has been amply satisfied. Indeed,
11 there's been no evidence to the contrary.

12 The trustee has testified this is the highest and best
13 offer he's had. Given the nature of the acquisition, this
14 appears to be amply supported. The fact that it is a whole lot
15 less than Mr. Riffin paid when he had other reasons to buy it,
16 and believed he had little choice but just simply to take the
17 offer that CSX had made to WMS, LLC -- and I put quotes around
18 that entity -- doesn't determine its present value in the
19 marketplace. So I find the sale is within reasonable business
20 judgment.

21 Now, what of these bills of sale? Even on their face,
22 they do not purport to divest Mr. Riffin of all of his
23 interests in the line of railroad. If given the meaning that I
24 think Mr. Strohmeier would like, it might divest him of a
25 percentage. But I don't decide that today. Whatever interests

1 others held in the rights of this line, as of the petition
2 date, will attach to the proceeds of sale and must be
3 determined within the framework of an adversary proceeding,
4 because of the effect of Federal Rule of Bankruptcy Procedure
5 7001, a declaration of rights. There is such an adversary
6 proceeding pending, and it's not before the Court for decision
7 today.

8 I must state that the Court has some sympathy for
9 those who have provided so much money to Mr. Riffin and to whom
10 apparently Mr. Riffin believes or at least argues that he has
11 no obligation. I further find that purchaser is operating in
12 good faith. There's certainly all evidence of that and no
13 evidence to the contrary -- there's no evidence of collusion or
14 anything else of that nature -- and that this satisfies what is
15 provided for in Section 363(m) of the Code.

16 Finally, given the time that all of this dispute has
17 lasted and the tie-up of the line and those who may be affected
18 by its tie-up, the Court finds there is significant basis to
19 not stay the effect of its order when entered approving the
20 sale as provided for under Federal Rule of Bankruptcy Procedure
21 6004(h), unless there be posted before settlement a bond to
22 protect the estate and anyone interested in the proceeds, which
23 bond shall be not less than the full amount of the purchase
24 price, plus 10,000 dollars to protect against expenditures as
25 administrative expenses which would detract from the proceeds

1 being available potentially to other parties.

2 As to the settlement agreement. Under the terms of
3 the settlement, by delivery of a deed by CSX to the assignee by
4 the trustee of the rights inherited by the estate, which were
5 the equitable rights of Mr. Riffin as assignee approved by CSX
6 under the original contract, CSX will, in effect, end its
7 involvement with the line, as it obviously wishes to do. The
8 settlement appears to be one which benefits parties, is
9 consistent with the legal findings of this Court as to this
10 line, and is approved.

11 The old deed, to the extent it somewhere still exists
12 in a drawer, that Mr. Riffin can't find, is void. It appears
13 it was likely issued in error in the first place and subject to
14 corrective rights. It is subordinate to the rights of the
15 estate in bankruptcy and it is of no longer any effect.

16 These are the findings of facts and conclusions of the
17 Court. The motion to sell the line to the bid purchaser is
18 approved, is granted. The sale is approved. The motion to
19 approve settlement is granted and the settlement is approved.
20 Order shall be provided to the Court.

21 As I've already stated, the Court makes a specific
22 finding, the purchaser is proceeding in good faith, and the
23 Court waives the stay of its order approving sale unless a bond
24 be posted in the full amount I stated, no later than the actual
25 settlement and delivery of the deed.

1 To make sure there's no confusion, since confusion
2 seems to arise, there is no stay unless this Court enters an
3 order staying. And the order will not be entered unless
4 requested by a motion to stay accompanied by proof of posting
5 of a bond.

6 THE DEPUTY: All rise. Court is adjourned.

7 (Whereupon these proceedings were concluded at 12:25 p.m.)

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CERTIFICATION

I, Penina Wolicki, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Penina Wolicki

February 22, 2011

PENINA WOLICKI
CET**D-569
AAERT Certified Electronic Transcriber

Date