



**DAVID J. HORVATH**  
ATTORNEY AT LAW

7100 E. PLEASANT VALLEY RD. SUITE 110  
INDEPENDENCE, OHIO 44131  
TELEPHONE: 216-986-0860  
FAX: 216-986-0861

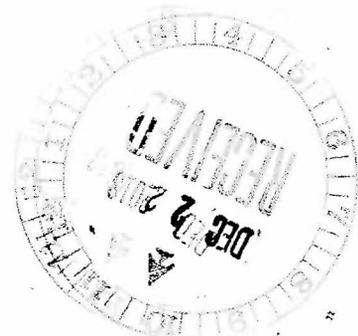
235135

November 26, 2013

Surface Transportation Board  
Secretary of Administration  
395 E. Street SW  
Washington, DC 20423

FD 35788

*RE: 14500 Limited LLC v. CSX Transportation, Inc.*



Dear Chief of Secretary of Administration:

Enclosed is the original and 11 copies of the Petition for Declaratory Order filed by 14500 Limited LLC, a disc with the pleading in Word and PDF format, and a check for the filing fee of \$1,400.00.

Please time and date stamp a copy of this letter and the Petition, and return it in the self-addressed stamped envelope.

Thank you for your assistance with this matter. Please call me or e-mail me at [djhorvath@hotmail.com](mailto:djhorvath@hotmail.com) if you have any questions.

Respectfully,

*David J. Horvath*

David J. Horvath

**FEE RECEIVED**

DEC 2 - 2013

SURFACE  
TRANSPORTATION BOARD

DJH/nz  
Enclosures

**FILED**

DEC 2 - 2013

SURFACE  
TRANSPORTATION BOARD

ENTERED  
Office of Proceedings

DEC 2 - 2013

Part of  
Public Record

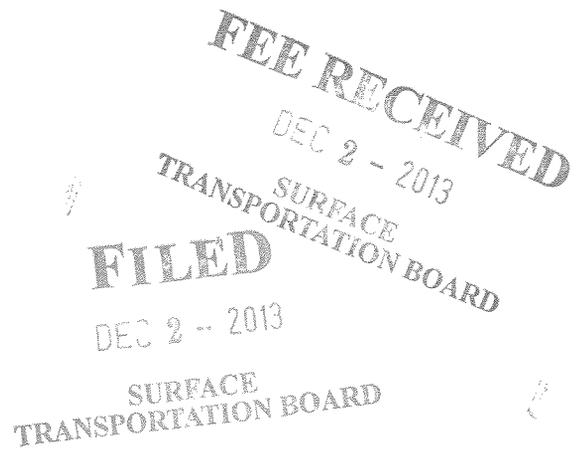
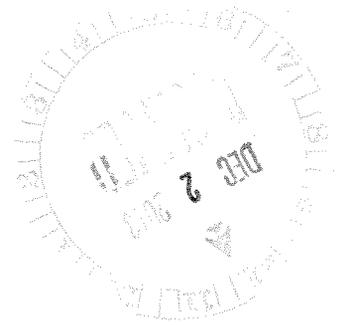
235/35

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Docket No. FD35788

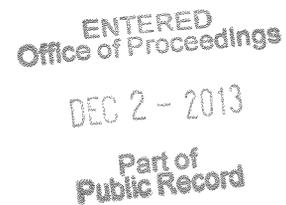
14500 LIMITED LLC  
v.  
CSX TRANSPORTATION, INC.

PETITION FOR DECLARATORY ORDER



David J. Horvath, Esq.  
7100 East Pleasant Valley Road  
Suite 110  
Independence, Ohio 44131  
(216) 986-0860

Dated: November 26, 2013



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Docket No. \_\_\_\_

---

14500 LIMITED LLC  
v.  
CSX TRANSPORTATION, INC.

---

PETITION FOR DECLARATORY ORDER

---

Pursuant to 5 U.S.C. §554(c) and 49 U.S.C. §721 (a), 14500 Limited LLC (hereinafter 14500) does hereby petition the Surface Transportation Board (hereinafter STB) for an order declaring that certain properties clearly identified within the hereto attached and incorporated Complaint for adverse possession, originally filed in the Cuyahoga Court of Common Pleas, and thereafter removed to the United States District Court, Northern District of Ohio, Eastern Division under Case Number 1:12CV1810 be hereby granted and that the STB hereby order and declare that the Plaintiff, by the common law application under the laws of Ohio of adverse possession is the rightful fee simple owner of the land in question.

In Judge Boyko's Order of November 18, 2013 the Judge hereby referred this case to the Surface Transportation Board to determine all claims of the Plaintiff. Finding that the ICCTA preempts the Plaintiff's state court's action, this Court "stays the above action and refers the matter to the STB to determine the merits of Plaintiff's claims. This action is removed from the Court's active docket pending the administrative process". A copy of the Court's order is also attached hereto and incorporated herein. Therefore, 14500 respectfully requests the STB to open

a declaratory order proceeding to resolve the issues relating to the adverse possession of Defendant's property and claims of the Plaintiff as they relate to CSX Transportation Inc. and the land identified within the complaint attached hereto.

Respectfully submitted,



---

**DAVID J. HORVATH 0055989**  
7100 East Pleasant Valley Road  
Suite 110  
Independence, Ohio 44131  
Telephone: 216-986-0860  
[djhorvath@hotmail.com](mailto:djhorvath@hotmail.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby attests that a true and accurate copy of this petition along with its Exhibits has been mailed to Robert E. Haffke, Jones Day Corporate Offices, 901 Lakeside Ave., Cleveland, Ohio 44114 by way of Ordinary US Mail this 26th day of November, 2013.



---

David J. Horvath

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>14500 LIMITED,</b>	)	<b>CASE NO.1:12CV1810</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE CHRISTOPHER A. BOYKO</b>
	)	
<b>Vs.</b>	)	
	)	
<b>CSX TRANSPORTATION, INC.,</b>	)	<b><u>ORDER</u></b>
	)	
<b>Defendant.</b>	)	

**CHRISTOPHER A. BOYKO, J:**

This matter is before the Court on the Court's Order of March 14, 2013, instructing both parties to show cause why the above-captioned case should or should not be dismissed without prejudice based on the exclusive jurisdiction of the Surface Transportation Board ("STB") to hear claims concerning rail transportation. The Court ordered the parties to submit cross briefs no later than April 12, 2013. Defendant timely submitted its brief. Ten days after the due date for briefs, Plaintiff filed a motion for enlargement of time to oppose Defendant's brief. Plaintiff argued that additional time was needed to respond because Defendant's brief argued for dismissal with prejudice when the Court's Order required the parties to brief why dismissal without prejudice should or should not be entered. Furthermore, Plaintiff's Motion stated,

“In order to adequately address this issue, additional time is necessary. Counsel for the Plaintiff was out of the State from April 18-21, 2013. The proper and normal course of response (assumedly ten days) does not afford counsel adequate time with which to properly represent his client.”

The Court denied Plaintiff’s Motion holding:

Plaintiff fails to explain why it could not have requested additional time within the time frame ordered by the Court. Plaintiff’s counsel’s absence from the state fails to explain why it failed to timely file its brief since the absence occurred nearly one week after the Court ordered due date for briefs. Furthermore, Plaintiff fails to explain why it needs additional time to brief the issue of with vs. without dismissal when the Court ordered cross briefs, not responsive briefs.

Therefore, the Court has before it solely the brief of Defendant.

#### **Background Facts**

As recounted in the Court’s Order denying Plaintiff’s Motion to Remand, the underlying facts are as follows. Plaintiff is a trucking company with property located in the City of Cleveland, Ohio. Defendant CSX Transportation, Inc. (“CSX”) owns the Collinwood Railyard whose property abuts Plaintiff’s. Plaintiff contends that the previous owner of its property and subsequently Plaintiff thereafter, have encroached on Defendant’s property to the point of erecting a fence around a portion of it. As a result, Plaintiff and its predecessors have excluded Defendant from the property for more than twenty-one years. In June 2012, Plaintiff filed an action in state court to quiet title due to adverse possession and for prescriptive easement. Plaintiff alleges that the adversely possessed property is necessary for it to maintain its operation.

On July 13, 2012, Defendant removed the case to this Court alleging complete federal preemption under Section 10501(b) of the Interstate Commerce Commission Termination Act (“ICCTA”), 49 U.S.C. § 10101 *et seq.* and, alternatively, under 28 U.S.C. §1332 due to the

diversity of the parties. According to Defendant, this parcel is necessary for its present and future operation of the railyard. In fact, Defendant contends the parties entered into preliminary discussions for the sale of the disputed property but Defendant ultimately determined the property was essential to its future expansion.

Plaintiff filed a Motion to Remand, contending that state property law applied and the case was not preempted by federal statute. After considering the arguments, the Court held that the ICCTA completely preempted Plaintiff's state law adverse possession claim. The Court then issued its show cause order requiring the parties' brief whether the STB had exclusive jurisdiction over Plaintiff's claims.

Defendant contends the Court should find both Plaintiff's claims completely preempted by the ICCTA and should dismiss Plaintiff's Complaint with prejudice. According to Defendant, Plaintiff's claim for prescriptive easement is, in essence, identical to Plaintiff's adverse possession claim because it seeks an exclusive easement that would, in fact, deprive Defendant of its property. Unlike the prescriptive easement issue in the STB case of *Jie Ao and Xin Zhou*, No. FD 35539, 2012 WL 2047726 (STB June 4, 2012), wherein the STB held such a claim was not preempted because the railroad could still use the property in question, Defendant argues the railroad would be unable to use the property in this case if Plaintiff is given the exclusive easement it seeks.

At paragraph 32 of Plaintiff's Complaint, Plaintiff states:

32. That the use of the Defendant's land for such periods creates an easement by prescription and therefore entitles Plaintiff to claim ownership of said lands.

Given the above plain language of the Complaint wherein Plaintiff expressly seeks

ownership of the property in dispute under a prescriptive easement theory, the Court agrees with Defendant that Plaintiff's prescriptive easement claim is also completely preempted by the ICCTA for the same reasons Plaintiff's adverse possession/quiet title claim is preempted- i.e.- because it seeks to deprive the railroad of its property that would affect railroad transportation.

Having determined that both Plaintiff's claims are completely preempted by the ICCTA, the Court must determine whether to proceed with the claims here, stay the case and refer the matter to the STB for a determination, or dismiss the claims. Defendant asks the Court to dismiss the claims because they are completely preempted by the ICCTA. Defendant relies on the case of *B & S Holdings, LLC v. BNSF Ry.*, 889 F. Supp.2d 1252, 1260 (E.D. Wash. 2012). In *B & S*, the Court held Plaintiff's state law claims were completely preempted by the ICCTA. The Court then further determined that the STB had exclusive jurisdiction over the claims and dismissed Plaintiff's claims with prejudice.

The Court disagrees with Defendant that complete preemption mandates dismissing Plaintiff's claims with prejudice. First, the complete preemption doctrine does not mandate dismissal, instead, completely preempted claims are treated as federal claims creating federal question jurisdiction. See *Loffredo v. Dailer AG*, 500 Fed. Appx. 491, 500 (6th Cir. 2012). (“[A] completely preempted state-law claim “arises under” federal law and thus vests the district court with federal-question jurisdiction.” (“Because state-law claims that are completely preempted are, in fact, federal claims, the court should treat them as such...”). *Id.* Thus, by finding that Plaintiff's claims are completely preempted by the ICCTA, the Court has jurisdiction over the claims. However, the appropriate course is not dismissal, rather,

proceed on the merits of the claims under the ICCTA.

This brings us to the next issue concerning whether the Court or the STB has jurisdiction to hear Plaintiff's claims. According to Defendant, dismissal with prejudice is warranted "[b]ecause Plaintiff's claims are both completely preempted by ICCTA, Plaintiff cannot assert those claims in any forum." Defendant then cites *to B & S Holdings* in support of its dismissal argument. However, as the Court reads *B & S Holdings*, the Washington district court did not dismiss the claims therein because they were completely preempted. Instead, the court dismissed the state law claims because the court determined the STB had exclusive jurisdiction over those claims. "Thus, whether to grant quiet title of BNSF's property under a claim of adverse possession is a decision that necessarily involves the regulation of rail transportation. Under the ICCTA, Congress has vested exclusive jurisdiction over the regulation of rail transportation in the Surface Transportation Board." *B & S Holdings*, 889 F. Supp.2d at 1260. The Court then dismissed with prejudice Plaintiff's state law claims.

Defendant further contends the STB need not determine the issue because the *Jie Ao* decision stands as clear precedent mandating dismissal. However *Jie Ao* was merely a declaratory judgment action asking the Board to determine whether Plaintiff's state law claims were preempted. Similarly, in *Soo Line Railroad Co. v. City of St. Paul*, 827 F. Supp.2d 1017 (D. Minn. 2010) the court ruled on a partial motion for summary judgment, seeking only a declaratory judgment that Plaintiff's claims were preempted by the ICCTA. In short, none of the cases presented by Defendant addressed the merits of completely preempted claims. Thus, Defendant has presented no binding precedent how to proceed on the merits

once the Court has determined complete preemption.

Having found Plaintiff's claims are completely preempted by the ICCTA, the Court must decide whether to refer the matter to the STB for a decision on the merits or keep the case, proceed with discovery and address the issues on dispositive motion or trial.

As discussed in the Court's Opinion on Plaintiff's Motion to Remand, the ICCTA confers exclusive jurisdiction upon the STB over:

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. § 10501(b).

“With the enactment of ICCTA, effective January 1, 1996, Congress codified an explicit preemption clause at 49 U.S.C. § 10501(b)(2), which provides that: ‘Except as otherwise provided in this part, the remedies provided under this part with respect to the regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.’” *Columbiana County Port Authority v. Boardman Tp. Park Dist.* 154 F.Supp.2d 1165, 1180 (N.D.Ohio, 2001). There is no dispute that the STB is granted exclusive jurisdiction over railroad transportation. *Railroad Ventures, Inc. v. Surface Transp. Bd.* 299 F.3d 523, 530 (6th Cir. 2002) (“The STB is now the federal agency with exclusive jurisdiction over transportation by railroad.”) The Court, having determined that the claims are completely preempted, finds the matters before it fall within the exclusive jurisdiction of

the STB. However, the statutory scheme of the ICCTA is not quite cut and dried on this issue because 49 U.S.C. § 11704(c)(1) expressly permits persons injured by railroad carriers to file suit in court. “A person may file a complaint with the Board under Section 11701(b) of this title or bring a civil action under subsection (b) of this section to enforce liability against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.”

The circuit courts that have considered this issue agree the language of the ICCTA at § 10501(b), conferring exclusive jurisdiction on the STB over matters concerning railroad transportation, does not deprive a federal court of subject matter jurisdiction. See *Elam v. Kansas City Southern Railroad Co.*, 635 F.3d 796 (5th Cir. 2011), *Pejepscot Industrial Park, Inc. v. Maine Central Railroad Co.* 215 F.3d 195 (1st Cir. 2000). Both circuit courts further agreed “when a civil action in federal court arises under the ICCTA, the action ordinarily should be stayed and the relevant claims referred to the STB.” *Elam* at 810. The *Elam* court considered the ICCTA jurisdictional paradox and determined that, under the theory of primary jurisdiction, it is in general, the better course of practice to stay the federal case and refer the matter to the STB. In *Elam*, the court ultimately determined that the matter did not require referral because the Plaintiff had not identified any issue requiring resolution by the STB. However, in *Pejepscot*, the First Circuit ordered the ICCTA preempted claims be referred to the STB for a determination. The Court agrees that referral is preferred where, as here, Plaintiff’s claims seeking to deprive Defendant railroad of its property, fall under the exclusive jurisdiction of the STB. Finding that the STB regularly determines such matters, possesses the expertise and primary jurisdiction over the claims in Plaintiff’s Complaint and to ensure that Plaintiff is not unfairly disadvantaged by having its claims dismissed, the Court

stays the above action and refers the matter to the STB to determine the merits of Plaintiff's claims. The action is removed from the Court's active docket pending the administrative process. The parties are ordered to submit a status report within ninety days of the date of this Order.

IT IS SO ORDERED.

s/ Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
United States District Judge

Dated: November 18, 2013



5. That the Defendant's property, parcel number 112-27-003 abuts Plaintiff's property: parcel 112-27-005 along with other parcels known as 112-27-002 and 112-28-003.
6. That the records of Cuyahoga County list New York Central Lines, LLC as the owner of this property.
7. That NYC Newco, Inc. was the successor corporation to New York Central Lines, LLC, a Delaware limited liability company, by operation of a merger therewith.
8. That Defendant CSX is the current owner of this property as a successor corporation through merger with NYC Newco, Inc., a Virginia corporation.
9. That previous owners, and the Plaintiff have encroached upon the Defendant's parcel and Plaintiff continues to encroach upon Defendants parcel.
10. The predecessor owners even erected a fence around part of the Defendant's property outlined in Exhibit A attached hereto and incorporated herein.
11. Predecessor owners and Plaintiff have therefore excluded Defendant, and all others from use of that part of Defendant's property.
12. That this use of Defendant's property has been open, hostile, and continuous.
13. That the Plaintiff and proceeding landowners and privities of contract have continued to use this land to the exclusion of Defendant for more than twenty one years.
14. That Plaintiff has continued to maintain this land, and has incorporated use of this land into its everyday business as did its predecessor owner.
15. That Exhibit B gives reference to the property lines and visual descriptions of the land being used by Plaintiff but which is owned by Defendant.

16. The fence referenced above is behind the tree line as clearly shown on Exhibit A.
17. The fence was erected as the predecessor owner believed the proper property line was behind the trees and not as referenced in the county records.
18. Plaintiff has continued to preclude Defendant from using this property as did previous owners for a period of more than twenty-one (21) years.
19. No one other than Plaintiff and previous owners of this property has used Defendant's property. In fact, Defendant has not used this property for periods in excess of twenty-one years.
20. That Plaintiff's use of Defendant's property has been open and notorious. At no time during these twenty-one plus years has Defendant ever tried to remove Plaintiff or predecessors from the property, or otherwise advise anyone that this use must terminate.
21. At all times the owners of the encroaching parcels have exercised their intention to possess this property, adversely and to the exclusion of all others including Defendant.
22. That the physical features of this property clearly establish this exclusion by way of the tree line and other such borders.
23. The use of this area is necessary for the operation of the business interests of the Plaintiff as it has been so for previous owners.
24. At all times any party in possession of the property has honestly entered and held this land with the belief that it was their own.

COUNT ONE-QUIET TITLE

25. Plaintiff restates each and every allegation, fact and theory set forth above as if fully rewritten herein.

26. It is therefore Plaintiff's claim to quiet title in Plaintiff's favor for parts of parcel number **112-27-003** as outlined in the attached Exhibit A.
27. Plaintiff prays this Court to determine that this area, of which a meets and bounds description will be created, is the possession of Plaintiff to the exclusion of all others including Defendant.
28. At all times during the past twenty-one plus years it has been visible that this property has been adversely possessed by the Plaintiff and previous land owners. The possession has been such as to give the Defendant clear notice of said adverse possession.
29. That there is privity of contract between the current owner/occupant of the property and any and all previous occupants of the property sufficient to satisfy the twenty-one year requirement.

#### COUNT TWO-EASEMENT

30. Plaintiff restates each and every allegation, fact and theory set forth above as if fully rewritten herein.
31. That by the continued use, and the necessity for said use there exists a perpetual easement on this land for the purposes of conducting commercial activities so long as such activities exist and the need to use the land for the transportation of goods exist.
32. That the use of the Defendant's land for such periods creates an easement by prescription and therefore entitles Plaintiff to claim ownership of said lands.

Wherefore having fully stated its cause of action to Quiet Title in its favor, Plaintiff respectfully prays this Court to award ownership of the land so described herein and depicted in the attachments hereto to Plaintiff thereby establishing complete ownership in said land to the exclusion of all others including Defendant. Plaintiff alternately prays for the establishment of a

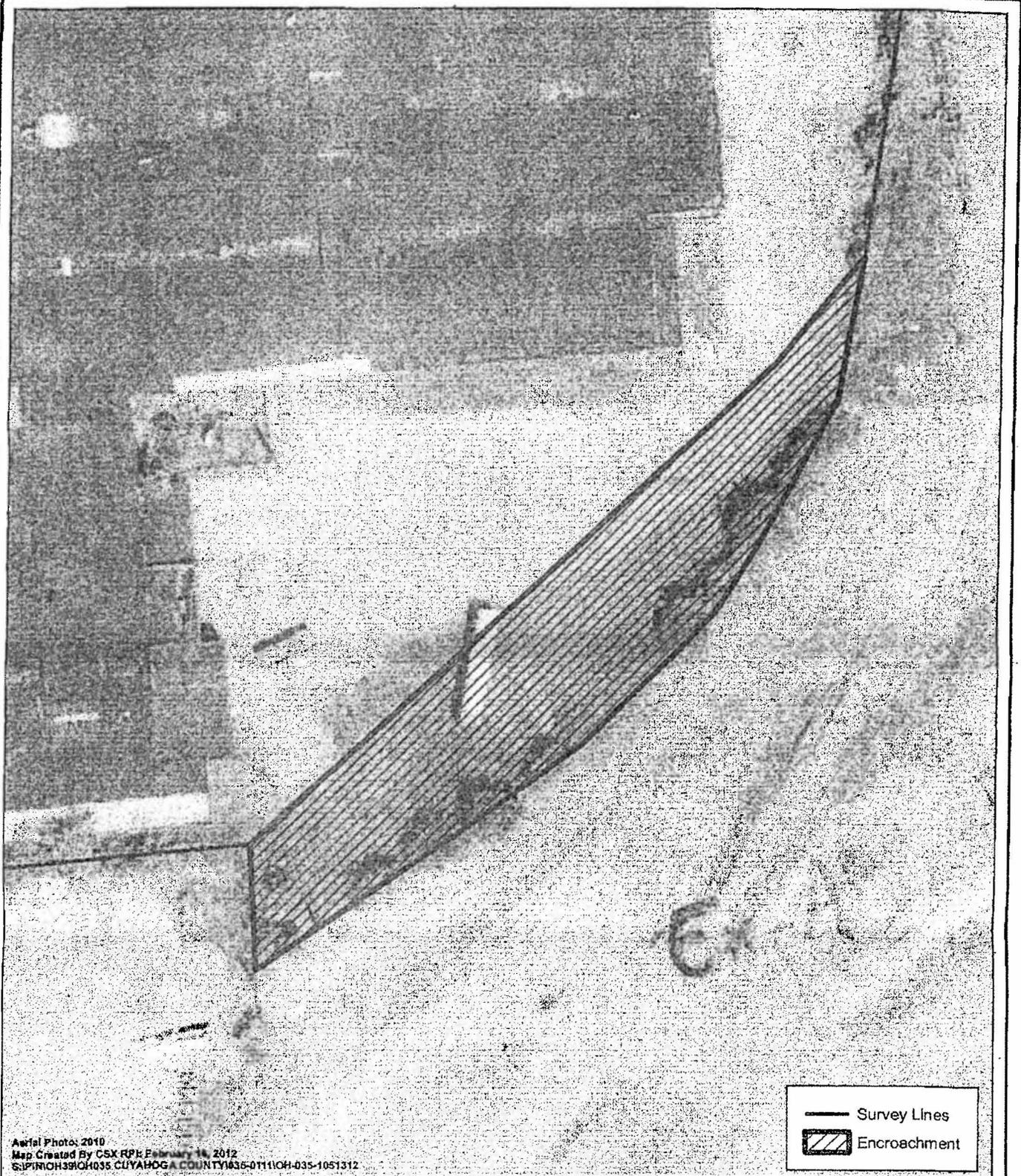
permanent easement on the lands commensurate with the historical use and domination of such lands. Plaintiff further asks for any and all relief this Court finds just and equitable which may supplement or compliment the prayer herein for ownership.

Respectfully submitted,



---

**DAVID J. HORVATH 0055989**  
7100 East Pleasant Valley Road  
Suite 110  
Independence, Ohio 44131  
Telephone: 216-986-0860  
[djhorvath@hotmail.com](mailto:djhorvath@hotmail.com)



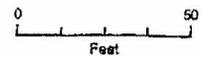
— Survey Lines  
▨ Encroachment

Aerial Photos: 2010  
Map Created By CSX RPE February 14, 2012  
S:\PIR\OH\39\OH035 CUYAHOGA COUNTY\435-011\OH-035-1051312



CSX Real Property, Inc.

**CSX Transportation, Inc.**  
**Cleveland Yard Encroachment**  
**Site ID: OH-035-1051312**  
**Cleveland, Cuyahoga County, OH**  
**Great Lakes Division - Cleveland Subdivision**



THIS RAILROAD VALUATION MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS, SHOWN ON THIS EXHIBIT ARE APPROXIMATE.

Case: 1:12-cv-01810 Doc #: 1-1 Filed: 07/13/12 9 of 9 PageID #: 21

39035 0111

QD 174

EXHIBIT "A"



SITE, 0.4 +/- AC.

MILE POST QD 174.4  
GREAT LAKES DIVISION  
CLEVELAND SUBDIVISION

S:\PIN\OH39\OH035 CUYAHOGA COUNTY\ 035-011\OH-035-1051312\OH-035-1051312.DGN

CSX TRANSPORTATION, INC. SITE ID: OH-035-1051312	DATE: 02-16-12	CITY: CLEVELAND	VAL. SECT.:	GIS NUMBERS:	PIN NUMBERS:
	SCALE: 300'	STATE: OH	V204A	53128	39035 0111
ENCROACHMENT IN COLLINWOOD YARD CLEVELAND, CUYAHOGA COUNTY, OH	DRAWN BY: JB	FIPS: 39035	MAP No:		
	REVISED:	DWG #: 1051312	3.5		