

Before the

**SURFACE TRANSPORTATION BOARD**

236669

STB Docket No. FD 35316

ENTERED

Office of Proceedings

September 15, 2014

Part of

Public Record

**ALLIED ERECTING AND DISMANTLING, INC.  
AND ALLIED INDUSTRIAL DEVELOPMENT CORPORATION  
- PETITION FOR DECLARATORY ORDER -  
RAIL EASEMENTS IN MAHONING COUNTY, OHIO**

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**SUPPLEMENTAL REPLY OF RESPONDENTS TO  
PETITION TO REOPEN AND SUPPLEMENT THE RECORD**

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Attorneys for Respondents

Dated: September 15, 2014

Before the  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35316

**ALLIED ERECTING AND DISMANTLING, INC.  
AND ALLIED INDUSTRIAL DEVELOPMENT CORPORATION  
- PETITION FOR DECLARATORY ORDER -  
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PETITION TO REOPEN AND SUPPLEMENT THE RECORD**

The Board issued a final decision in this proceeding on December 20, 2013 (the “*December 2013 Decision*”). On February 20, 2014, after filing an appeal with the United States Court of Appeals for the Sixth Circuit, Allied Erecting and Dismantling Co., Inc. and Allied Industrial Development Corporation (collectively, “Allied”) filed with the Board a Petition to Reopen and Supplement the Record (the “Petition”) under 49 U.S.C. §722(c) and 49 C.F.R. §1115.4. Respondents<sup>1</sup> timely filed a Reply to the Petition to Reopen on March 12, 2014 (“Respondents’ Reply to Petition”), asserting that Allied had not met the requirements for reopening, but not responding to the allegedly new evidence presented by Allied with respect to the LTV Tracks and easement, or its implications. Allied responded by filing a Motion seeking leave to file a reply to the Respondents’ Reply to Petition, which Respondents opposed. By

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<sup>1</sup> The original Allied state court complaint named six railroad members of the “Ohio Central Railroad System” as defendants, those being: Ohio & Pennsylvania Railroad Company (“OHPA”), Mahoning Valley Railway Company (“MVRV”), Ohio Central Railroad, Inc., Warren & Trumbull Railroad Company, Youngstown & Austintown Railroad, Inc. and Youngstown Belt Railroad Company (the “Railroad Respondents,” sometimes referred to collectively by the Board as “Ohio Central”). In the subsequent Petition for Declaratory Order in this proceeding, Allied also named Railroad Respondents’ direct and indirect corporate parents, Summit View, Inc. (“Summit View”) and Genesee & Wyoming Inc. (“GWI”), as respondents. The *December 2013 Decision* dismissed Summit View and GWI as respondents. Although Allied has not challenged the dismissals in the Petition, in an abundance of caution, “Respondents” herein shall include the Railroad Respondents, Summit View and GWI.

decision served August 6, 2014 (the “*August 2014 Decision*”), the Board directed the Railroad Respondents to supplement their Reply to Petition to respond to the supplemental evidence Allied has proposed to introduce, and to Allied’s arguments with respect to the import of the supplemental evidence.<sup>2</sup> The *August 2014 Decision* did not address Allied’s Motion to file a reply to a reply, which Respondents continue to oppose. Respondents file this Supplemental Reply in accordance with the *August 2014 Decision*. As set forth in the Respondents’ Reply to Petition<sup>3</sup> and as supplemented herein, the Board should find that Allied has not met the standards for reopening, and should deny Allied’s Petition to Reopen.<sup>4</sup>

### **Summary of Argument**

The essential finding that Allied seeks to reopen is the Board’s finding that the stopping and storing of cars by MVRVY or any of the other Railroad Respondents<sup>5</sup> is not prohibited by or a violation of the LTV easement. *December 2013 Decision*, at 15. Respondents assert that the LTV tracks have been and are used by MVRVY as main line tracks, that Allied has not shown otherwise, and that there is no basis for reopening this proceeding. Moreover, as specifically found by the Board, “our determination that there are no restrictions on stopping and storing rail cars in the easement agreements, it is not necessary to decide whether the LTV Tracks are mainline tracks or ancillary spur tracks.” *December 2013 Decision* at 14. Thus, even if Allied

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<sup>2</sup> By decision dated August 28, 2014, the original due date for this Supplemental Reply was extended until September 15, 2014.

<sup>3</sup> The facts and arguments set forth in the Respondents’ Reply to Petition are incorporated herein by reference. Respondents will repeat the arguments set forth therein only where necessary for clarity.

<sup>4</sup> Respondents have previously responded to Allied’s arguments relating to PL&E Easement, and will not repeat them here. Respondents’ Reply to Petition, at 10.

<sup>5</sup> Respondents do not claim that any Railroad Respondents other than MVRVY have a right to use the LTV Tracks and easement, and contend that none of the other railroads have used them. Allied has presented no evidence to the contrary. Accordingly, this Supplemental Reply will focus solely on the rights and actions of MVRVY.

were to be successful in demonstrating that the LTV Tracks are ancillary spur tracks, it would not change the Board's decision, and there is no reason to reopen the *December 2013 Decision*.

## **Argument**

### **1. Standards for Reopening**

The standards for granting a petition to reopen are fully set forth in Respondents' Reply to Petition, at 5-6. In sum, a petition to reopen will be granted *only if* the petition presents new evidence or substantially changed circumstances that would materially affect the case, or demonstrates material error in the decision being challenged.

### **2. Allied's "new evidence" does not demonstrate that MVRV did not operate the LTV Tracks as main line tracks.**

Allied seeks to introduce "new evidence" in its attempt to demonstrate that MVRV does not have common carrier rights to use the LTV easement and the tracks located within the easement,<sup>6</sup> and that therefore the Board's conclusion that MVRV can stop and store cars on the LTV Tracks should be vacated. Allied Petition at 4.

Based on the information provided by Allied, and on independent research, it appears that the Allied property at issue in this proceeding<sup>7</sup> was former Republic Steel property and was not owned by Jones & Laughlin (the parent of MVRV's parent) in 1982 when MVRV was first authorized to operate as a common carrier railroad subject to the jurisdiction of the Interstate

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<sup>6</sup> The Board should ignore the numerous references to and discussion of the title and operating issues related to MVRV's use of the tracks on the *west side* of the Center Street Bridge, in the Allied Petition, and particularly in the Allied Motion to Waive Provisions of 49 CFR 1101.13 to Permit filing of Reply to Respondents' Reply. Those issues are the subject of the proceeding in Docket No. FD 35477, *Allied Industrial Development Corporation – Petition for Declaratory Order*, and are not relevant to the question in this case about the scope of the permitted operations on the east side of the Center Street Bridge. See discussion in Reply of Respondents to Allied Motion to Waive Provisions of 49 CFR 1101.13.

<sup>7</sup> The property at issue is bounded by the Mahoning River to the north and the Center Street Bridge to the west. See generally the map filed with Allied's Opening Statement as Exhibit E.

Commerce Commission (“ICC”). It appears that MVRV first began operations on the former Republic Steel property in 1984 following the merger of Republic Steel and Jones & Laughlin (and the subsequent renaming of the resulting company as LTV Steel). According to William Spiker’s Verified Statement (“Spiker V.S.”), ¶¶ 7 and 8, submitted by Allied with its Petition to Reopen, MVRV only operated the former Republic Steel tracks as an internal plant railroad. This may have been true initially, and if it were, MVRV would not have needed any ICC authority to acquire or operate the tracks as spur, industrial or side tracks. *See* 49 USC §10906 (then 49 USC §10907). Whether this was true at the time,<sup>8</sup> Allied has not demonstrated that the LTV Tracks were not operated as main line tracks at the time that Allied acquired the property in 1993, or when control of MVRV was acquired by Summit View in 2001. As the Board noted in the *December 2013 Decision*, at 14, Allied has not provided a developed argument concerning the characteristics of the tracks. The proposed new evidence does not address the characteristics of the track.

Moreover, there is evidence that whatever the initial use of the LTV Tracks was, the use in later periods was to provide service between LTV and connecting Class I carriers, and between other customers and the connecting Class I carriers. As Mr. Spiker notes, beginning in 1990, MVRV obtained the right to operate through Conrail’s (now Norfolk Southern Railway Company’s (“NS”)) Haselton Yard in order to move locomotives and equipment between LTV’s facilities on either side of the Mahoning River. *Spiker V.S.*, ¶¶ 4 and 9. *See also* Trackage Rights Agreement dated September 14, 1990, Reply of Respondents, Exhibit A-8. However,

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<sup>8</sup> Mr. Spiker has not been authorized to present testimony on behalf of MVRV, nor would the positions he held at MVRV suggest otherwise. Moreover, he was not in a position to know the basis on which MVRV interacted with the connecting railroads. Railroads whose sole tracks at a location are yard tracks can operate as a common carrier. *See Effingham Railroad Company--Petition for Declaratory Order--Construction at Effingham, IL, 2 STB 606 (1997).*

what Mr. Spiker does not include in his description is a reference to the amendment of the Conrail trackage rights just three months later. *See* Supplemental Agreement dated December 10, 1990, Reply of Respondents, Exhibit A-9. Under the Supplemental Agreement, MVRVY was given the right to use the Conrail tracks in Haselton Yard in order to serve the CASTLO industrial park. These additional rights enabled MVRVY to provide service over the LTV Tracks in order to connect CASTLO and the CSXT interchange west of the Center Street Bridge. Accordingly, from at least that time forward (including when Allied purchased the property and granted the LTV easement), MVRVY was using the LTV Tracks and easement to handle freight for customers other than LTV Steel.

At the time Summit View acquired control of MVRVY, it understood in good faith based on its review of MVRVY's operations and the representations of LTV, that MVRVY was using at least a portion of the LTV Tracks as main line tracks , handling business for LTV to and from connecting carriers and participating in the route (and charging the connecting carriers and not LTV), and handling business for customers in the CASTLO industrial park to Haselton Yard, and through Haselton Yard and across the LTV Tracks for interchange with CSXT. *See Verified Statement of Leonard Wagner* ("Wagner V.S."), at ¶¶ 4-8, attached hereto. The LTV Easement Agreement which was assigned to MVRVY as part of the overall transaction described the LTV Tracks (including tracks referred to as "Mains"), and included no restrictions on their use for railroad purposes. *See* LTV Easement, Reply of Respondents, Exhibit A-1. The Cuyahoga Valley Railway Company (MVRVY's parent, and an LTV Steel subsidiary) and MVRVY represented and warranted to Summit View that MVRVY had all necessary governmental authority to operate as it had been operating. *See* Stock Purchase Agreement dated March 30, 2001 (Section 3.2.1), Allied Opening Statement, Exhibit H. On this basis, Summit View

proceeded to obtain Board authority to control MVRV. *See Summit View, Inc. – Control – Mahoning Valley Railroad Company – Exemption from 49 USC § 11323*, Petition for Exemption (filed April 6, 2001) (a copy of which as produced by the Board’s staff on request of Respondents, is attached hereto for reference). The Petition attaches as Exhibit 2 a map of what Summit View was advised were the lines of railroad operated by MVRV; these include the tracks on the LTV Easement south of the Mahoning River and east of the Center Street Bridge. The STB authorized Summit View to control MVRV and its operations as described in the Petition. *Summit View, Inc. – Control Exemption – Mahoning Valley Railroad Company*, STB Finance Docket No. 34026 (served May 17, 2001) (MVRV is a “small switching carrier that moves freight between connecting roads and various shipping points, including manufacturing facilities operated by LTV Steel Company”). Accordingly, the Board should treat MVRV as being authorized to operate the LTV Tracks as main line tracks since at least 2001.

In conjunction with the transfer of control of MVRV to Summit View, the parties also negotiated a Transportation Services Agreement dated May 3, 2001, to cover ongoing service to be provided by MVRV to LTV Steel’s Copperweld facility. *See Allied Opening Statement*, Ex. P. *See also Wagner V.S.*, ¶ 7. In the Transportation Services Agreement MVRV agreed to continue to provide different types of services for LTV including interchanging traffic with connecting carriers, local service between LTV and locations directly served by MVRV, and specifically distinguished, “intra-plant service” within LTV’s Youngstown facilities. Transportation Services Agreement, §§ 3.02-3.04. The “in-plant” service is specifically described as contract, and not common carrier, service, and MVRV was to bill LTV for the service. Transportation Services Agreement, §§ 3.04(c)(d).

It is clear that MVRV, a licensed common carrier, has continuously operated in the area south of the Mahoning River, and over the LTV Tracks and the LTV easement. See *December 2013 Decision*, at 13. As acknowledged by both parties in their original filings, MVRV has used the tracks on the LTV Easement to move traffic between the east side of the Center Street Bridge and the west side, both to and from customers (including LTV), to move traffic to and from MVRV's Class I connections with CSXT on the western end of its lines and with NS (previously Conrail) on the east side in Haselton Yard, and to move locomotives and equipment to its shop west of the Center Street bridge for repairs and inspections. See *Allied Opening Statement*, at 12; *Reply of Respondents* at 6. See also *December 2013 Decision*, at 4. Thus, while the 1982 decision cited by the Board may not have been the proper basis for the Board to find MVRV was using the LTV Tracks as main line tracks, there is sufficient evidence in the record to support the finding that it was, and relying on the 1982 decision was not material error.

**3. Even if the LTV Tracks are determined to be ancillary tracks and not common carrier tracks, there was no material error in the Board's *December 2013 Decision*.**

As discussed above, MVRV was authorized to operate as a common carrier by the 1982 decision, and it has operated as such since that time. If the Board were to find that MVRV was not operating the LTV Tracks as main line tracks, then the LTV Tracks would clearly be ancillary spur tracks under 49 USC §10906. The Board found that the language of the LTV easement does not restrict railroad activities, and there is even less reason to believe that stopping, storing and staging of cars would be prohibited if the tracks were found to be ancillary spur tracks as that is a common usage for such tracks. Mr. Spiker acknowledges that MVRV used the LTV Tracks for those very purposes when it first began operating on the former Republic Steel property. See *Spiker V.S.*, ¶ 7.

As noted by the Board in its decision, the Board has jurisdiction over both main line tracks and ancillary spur tracks. *December 2013 Decision*, at 14 fn. 74. Further, “transportation” activities (including stopping, staging and storing) as defined in 49 USC §10102(9) are subject to the preemption provisions of 49 USC §10501(b). *See Grafton & Upton Railroad Company – Petition for Declaratory Order*, STB Docket No. FD 35776 (served January 27, 2014) (“G&U’s construction and use of the Parcel for rail carrier operations does not require our licensing authority because the construction of ancillary tracks and facilities is excepted from licensing by 49 U.S.C. §10906. Nonetheless, the express statutory preemption of §10501(b) applies here...”); *Boston and Maine Corporation and Springfield Terminal Railroad Company – Petition for Declaratory Order*, STB Docket No. 35749 (served July 19, 2013), *request for reconsideration denied* (October 31, 2013) (finding preemption prohibited local regulation of railroad common carrier service being provided over both yard track and private sidetrack) . *See also Green Mountain R.R. v. Vermont*, 404 F.3d 638, 643 (2d Cir. 2005); *Joint Petition for Declaratory Order—Boston & Maine Corp. and Town of Ayer*, 5 STB 500, 507 (2001), *reconsideration denied* (STB served Oct. 5, 2001); Accordingly, the Board’s determination that the interpretation that the easement agreement does not prohibit stopping and staging on the tracks, and that such activities are permitted whether the tracks were main line tracks or ancillary tracks, is clearly not erroneous.<sup>9</sup>

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<sup>9</sup> Whether or not the tracks were main line tracks or ancillary tracks, it is clear that MVRVY was a certificated carrier, and was operating as a carrier and not as a private party. While the Board seemed to indicate in the *December 2013 Decision*, at 15, that storage might not be permitted in certain instances when private parties are storing private cars, here is it clear that MVRVY was acting as a carrier; therefore the storage it was performing was clearly part of “transportation” as defined in 49 USC §10102(9).

### Conclusion

For the foregoing reasons and the reasons set forth in the Respondents' Reply to Petition, the Board should find that Allied has not shown that reliance by the Board on the ICC's 1982 decision resulted in any material error in the findings that the LTV easement does not prohibit the stopping, storing or staging of cars by Respondent Railroads over the LTV Tracks. Accordingly, the Petition to Reopen should be denied.

Respectfully submitted,



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Attorneys for Respondents

Dated: September 15, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2014, a copy of the foregoing Reply of Respondents to Petition to Reopen was served upon the following persons by email:

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\_\_\_\_\_  
Eric M. Hocky

**VERIFIED STATEMENT OF  
LEONARD WAGNER**

**VERIFIED STATEMENT OF  
LEONARD WAGNER**

1. My name is Leonard Wagner. I am the Vice President – Transportation of the Ohio Valley Region of Genesee & Wyoming Inc. (“GWI”). The Ohio Valley Region includes the Railroad Respondents in this proceeding, including specifically The Mahoning Valley Railroad Company (“MVRV”). I am providing this Verified Statement in support of the Reply of Respondents to Petition to Reopen.
2. Prior to the GWI’s acquisition of control of Summit View, Inc. (“Summit View”) in 2009, I was the Vice President of Operations of the Railroad Respondents, including MVRV. I served as the Manager of Marketing of MVRV beginning with Summit View’s acquisition of control of MVRV in 2001. As such, I have personal knowledge of the matters addressed in this Verified Statement.
3. In preparing this Verified Statement, I have also reviewed the Verified Statement of William Spiker submitted by the Petitioners in this proceeding Allied Erecting and Dismantling, Inc. and Allied Industrial Development Corporation (collectively “Allied”).
4. At the time control of MVRV was transferred to Summit View in 2009, the LTV Easement had been reserved from the 1993 sale of property east of the Center Street Bridge from LTV to Allied, and had been transferred to MVRV. At least since 2001 when my relationship with MVRV began, MVRV never acted solely as an internal plant railroad for LTV, nor were the tracks it operated simply as internal plant lines of LTV or its predecessors. There were some moves from the LTV Copperweld facility on the south side of the river to LTV on the north side of the river that were handled as internal plant moves and billed to LTV. However, when MVRV moved cars for LTV

Copperweld (and other LTV facilities) to and from connecting Class I rail carriers CSX Transportation, Inc. (“CSXT”) and Conrail (later Norfolk Southern Railway System (“NS”) as Conrail’s successor), MVRVY acted as a common carrier in the route, and was paid an allowance or division of the freight charges by the connecting Class I rail carriers. Indeed, the Transportation Services Agreement entered into between LTV and MVRVY in 2001 upon the sale of control to Summit View, distinguishes between “in plant” services and common carrier services to be provided by MVRVY (“switching service” to connecting carriers, and “local service” to other points served by MVRVY).

5. Moreover, the LTV Easement tracks have been used to provide rail service between customers located east of the property (primarily from the CASTLO industrial park in Struthers and the interchange with CSXT which is west of the property covered by the LTV Easement.
6. There have never been any customers or customer facilities located on the property covered by the LTV Easement east of the Center Street Bridge so there has been no opportunity for local service there. However, MVRVY, at least since 2001, has continuously used the LTV Easement tracks as more fully described herein.
7. Based on the LTV Easement and on the list of tracks attached as Schedule 4.02 to the Transportation Services Agreement, MVRVY believed that MVRVY was operating a portion of the tracks (in particular No.3 and 4 Mains, and track 239 which connected the Nos. 3 and 4 Mains) as common carrier main line tracks, with the remainder of the tracks covered by the LTV Easement being treated as plant and yard tracks. MVRVY, through the Transportation Service Agreement which was effective as of the closing of the sale of control of MVRVY, also obtained the right to use certain additional buildings and tracks

that LTV had retained and not transferred (defined as “LTV Facilities” under the Transportation Service Agreement). The use of the LTV Facilities was limited to use for service to LTV.

8. MVRVY has and had continuously used the tracks on the LTV Easement to move traffic back and forth between the east side of the Center Street Bridge and the west side – both to and from customers, and to and from MVRVY’s Class I connections with CSXT on the western end of its lines, and with NS (previously Conrail) on the east side in Haselton Yard. MVRVY has also used the tracks to move locomotives and equipment to its shop west of the Center Street Bridge for repairs and FRA inspections. The tracks have been used for the through movement of traffic, and for stopping and staging as necessary. Some of the tracks (in particular the No. 2 Main and the No. 3 Main) have been used for car storage.
9. I have reviewed the Verified Statement of Mr. Spiker (the “Spiker VS”). Mr. Spiker did not work for MVRVY after control was sold to Summit View. His description of MVRVY operations on the south side of the river does not adequately or completely describe operations of MVRVY in 2001.
10. Mr. Spiker indicates that by 2001 the LTV Easement tracks were used by MVRVY to move traffic between LTV facilities on the north and south side of the river (passing through Conrail’s Haselton Yard), to store cars, to load and unload cars, and to deliver and pick up cars to and from connecting Class I carriers. Spiker VS, ¶¶ 7, 9. What Mr. Spiker does not address is the relationship between MVRVY and the connecting Class I carriers – knowledge of the relationship, how the traffic is being billed and the operations

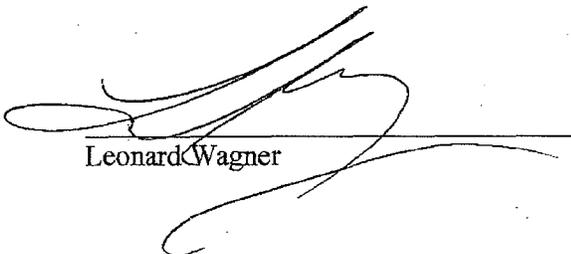
of MVRV as a common carrier appear to be beyond the scope of Mr. Spiker's various positions with the railroad. Spiker VS, ¶ 3.

11. Mr. Spiker's Verified Statement is also deficient because it does not include any reference to the traffic that by 2001 MVRV was moving between the customers in Struthers to the east of the property and the interchange with CSXT to the west of the property.

**VERIFICATION**

I, Leonard Wagner, verify under penalty of perjury under the laws of the United States, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on September 15, 2014.



Leonard Wagner

**SUMMIT VIEW PETITION FOR EXEMPTION  
TO CONTROL MVRV**

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April 6, 2001

1466

**VIA HAND DELIVERY**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Case Control Unit  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

**FEE RECEIVED**

ENTERED  
Office of the Secretary

APR 06 2001

APR 09 2001

SURFACE  
TRANSPORTATION BOARD

Part of  
Public Record

Re: Finance Docket No. 34026 Summit View, Inc. --  
Control -- Mahoning Valley Railroad, Company --  
Exemption from 49 U.S.C. § 11323

Dear Mr. Williams:

Enclosed for filing in the referenced docket please find an original and ten (10) copies of the Verified Petition for Exemption of Summit View, Inc., along with a diskette (in WordPerfect format) containing an electronic version of the filing and our check in the amount of \$6,500.00 to cover the requisite filing fee.

Please acknowledge receipt of the filing by stamping the enclosed duplicate of the Petition and returning to our messenger.

Sincerely,

  
Kelvin J. Dowd  
An Attorney for  
Summit View, Inc.

RJD/cbh  
Enclosures

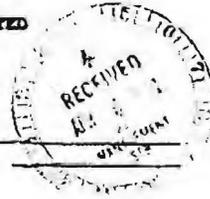
**FILED**

APR 06 2001

SURFACE  
TRANSPORTATION BOARD

**EXPEDITED CONSIDERATION REQUESTED**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



In The Matter of:

SUMMIT VIEW, INC. -- CONTROL -- ) Finance Docket No. 34026  
MAHONING VALLEY RAILROAD  
COMPANY -- EXEMPTION FROM  
49 U.S.C. § 11323

**VERIFIED PETITION FOR EXEMPTION**

**ENTERED  
Office of the Secretary**

**APR 08 2001**

**Part of  
Public Record**

**FEE RECEIVED**

**FILED**

**APR 06 2001**

**APR 06 2001**

**SURFACE  
TRANSPORTATION BOARD**

**SURFACE  
TRANSPORTATION BOARD**

SUMMIT VIEW, INC.  
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**Dated: April 6, 2001**

**Attorney & Practitioner**

**EXPEDITED CONSIDERATION REQUESTED**

BEFORE THE  
SURFACE TRANSPORTATION BOARD



In The Matter of:

SUMMIT VIEW, INC. -- CONTROL -- ) Finance Docket No. 34026  
MAHONING VALLEY RAILROAD )  
COMPANY -- EXEMPTION FROM )  
49 U.S.C. § 11323 )

**VERIFIED PETITION FOR EXEMPTION**

Summit View, Inc. ("~~Summit~~") by its undersigned counsel and pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1121, et seq., hereby petitions the Board to exempt its acquisition of control over the Mahoning Valley Railroad Company ("MVRC") from the prior approval requirements of 49 U.S.C. § 11323, et seq. As described in more detail in Part F of the Argument section, infra, expedited consideration of this Petition is both requested and warranted.

In support hereof, Summit respectfully shows as follows:

**STATEMENT OF FACTS<sup>1</sup>**

Summit is an Ohio corporation with a principal office address at 116 South Fifth Street, Coshocton, Ohio 43812. Summit is a Class III rail carrier within the meaning of the Intermodal Surface Transportation Efficiency Act of 1991 (49 U.S.C. § 10101, et seq.). However, Summit is a holding company that controls eight (8) Class III rail carriers operating in Ohio. They are the Ohio Central Railroad, Inc., the Ohio Southern Railroad, Inc., the Youngstown Belt Railroad, Inc., the Warren & Trumbull Railroad, the Ohio & Pennsylvania Railroad, the Youngstown & Austintown Railroad, the Pittsburgh & Ohio Central Railroad, and the Columbus & Ohio River Railroad Company. A map depicting the lines of these carriers is attached as Exhibit No. 1.

MVRC is a Class III railroad based in Campbell, Ohio. It operates over a total of approximately 81 miles of track (21.5 route miles) in the vicinities of Youngstown, Struthers and Campbell, Ohio. A map depicting MVRC's lines is attached as Exhibit No. 2. MVRC began operations in 1981, and operates principally as a switching carrier moving freight between connecting roads and various shipping points, including manufacturing facilities operated by LTV Steel Company ("LTV"). MVRC's capital stock is owned by the Cuyahoga Valley Railway Company ("CVRC"), which in turn is a wholly-owned

<sup>1</sup> The facts as stated in this Petition are verified by Mr. William A. Strawn, Summit's Vice-President.

subsidiary of LTV. LTV and CVRC's offices are located at 200 Public Square, Cleveland, Ohio 44114.

As here relevant, LTV presently is engaged in voluntary reorganization proceedings under Chapter 11 of the U.S. Bankruptcy Code.<sup>1</sup> In furtherance of its efforts to streamline operations and emerge from bankruptcy a stronger and more efficient operation, LTV sought and received from the Bankruptcy Court approval to complete sales of miscellaneous non-core assets that fall within certain economic parameters (the "Miscellaneous Asset Sale Procedures") without seeking individual Bankruptcy Court approval for each sale. The sale of MVRC to Summit meets the requirements of the Miscellaneous Asset Sale Procedures.<sup>1</sup>

Subject to Board approval under 49 U.S.C. § 11323, or exemption pursuant to 49 U.S.C. § 10502, Summit and MVRC have reached an agreement on terms for the sale to Summit of the capital stock of MVRC, thereby resulting in Summit's acquisition of control of MVRC. While ownership of MVRC would change, the nature and scope of its operations -- including in particular the frequency of service --

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<sup>1</sup> Case No. 00-43866, In re: LTV Steel Company, Inc., U.S. Bkrtpy. Ct., N.D. Ohio (Eastern Div.).

<sup>2</sup> See Motion of Debtors and Debtors in Possession for an Order, Pursuant to Sections 105, 161 and 163 of the Bankruptcy Code, February 28, 2001 ("Motion") at 3. A copy of the Motion is attached as Exhibit No. 3.

will remain the same or improve. Service will continue to be provided to and from all stations on MVRC's lines, and no shipper currently served by or accessible to MVRC will experience a reduction in or other adverse alteration of its transportation options. Through its incorporation into the Summit family of regional railroads, MVRC also would be able to avail itself of capital support and economies of scale and scope with respect to administrative functions offered by the Summit organization.

All of the rail carriers involved in or indirectly affected by this transaction are Class III railroads. However, Summit's acquisition of control of MVRC does not qualify for an automatic class exemption under 45 C.F.R. Part 1180.2(d)(2), because MVRC's tracks connect with those of an existing Summit subsidiary -- the Ohio & Pennsylvania Railroad ("O&P") -- near Struthers, Ohio.<sup>4</sup> It is for that reason that Summit is proceeding through the instant Petition for an individual exemption.

As explained in further detail below, Summit's acquisition of control easily meets the criteria for an individual exemption set out in 49 U.S.C. 10502(a). The acquisition (1) will promote several national rail transportation policy goals; (2) is limited in scope; and (3) raises no threat to subject shippers to abuse of market

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<sup>4</sup> Exhibit No. 2 shows the lines of MVRC and those of its connecting carriers.

power. Therefore, Summit respectfully urges the Board to grant this Petition. Further, because of the uncertainty inevitably arising from MIV's bankruptcy proceedings and the need to provide a prompt and efficient transition of control so as to reassure shippers and affected communities of the continued availability of reliable service, Summit requests that the Board accelerate its consideration of this Petition and grant the exemption expeditiously.

ARGUMENT

Section 10502(a) of the Act provides that "the Board, to the maximum extent consistent with this part, shall exempt a person ... or a transaction ..." when it finds the conditions set forth in Section 10502(a)(1) (consistency with rail transportation policy), and either Section 10502(a)(2)(A) (limited scope) or (2) Section 10502(a)(2)(B) (no abuse of market power) to be met. In this case, all three (3) criteria are satisfied.

A. Regulation Is Not Needed to Carry Out the National Rail Transportation Policy

Detailed scrutiny of Summit's acquisition of control over MIVRC is not needed to carry out the transportation policy goals of 49 U.S.C. § 10101. To the contrary, an exemption from the formal prior approval requirements will promote several of these goals. By

minimizing resource expenditures both by Summit and the Board, an exemption would expedite agency decision making (Section 10101(2)) and reduce barriers to entry (Section 10101(7)). Similarly, by enabling Summit to integrate MVRC into its existing family of Class III railroads, with attendant capital, logistics and administrative support, an exemption will foster sound economic conditions (Section 10101(5)) and encourage efficient rail carrier management (Section 10101(9)). See Finance Docket No. 31969, William T. Bright -- Control Exemption -- The Buffalo Creek Railroad Company, Decision served March 9, 1992 at 2-3. The pendency of LTV's bankruptcy proceeding and LTV's formal identification of MVRC as a "non-core" asset whose sale would be considered a benefit to LTV's long-term health (Motion at 3-4) accentuates the public policy benefit of granting an exemption to facilitate the transfer of control to Summit.

Equally important, no elements of the rail transportation policy would be adversely affected by Summit's acquisition. As noted supra, but for the connection between MVRC and O&P near Struthers, Ohio, the subject transaction would qualify for the class exemption promulgated at 49 C.F.R. Part 1180.2(d)(2) ("[t]he Board has found that its prior review and approval of these transactions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101: ..."). See, supra, Finance Docket No. 32904, Genessee I

Wyoming Inc. -- Continuance In Control Exemption -- Pittsburgh & Shawmut Railroad, Inc., Decision served June 21, 1996 at 5. If anything, in this case the connection promotes elements of the policy, as it will foster improved operating efficiency without foreclosing any transportation options presently open to shippers in the area. See Finance Docket No. 33942, USX Corporation -- Control Exemption -- Transtar, Inc., Decision served November 30, 2000; Finance Docket No. 33678, Emong Transportation Group, Inc. and Emong Railroad Group, Inc. -- Continuance In Control Exemption -- St. Lawrence & Atlantic Railroad, Decision served November 20, 1998. Moreover, by expediting MVRC's access to the capital and administrative support that is readily available from Summit, but which LTV cannot be expected to provide as it moves through reorganization, prospects are good that shipper options actually will be enhanced.

3. The Transaction is Limited in Scope

MVRC operates over a total of 83 miles of trackage, most of which are side-by-side switching and yard tracks. The railroad's total route mileage is only 21.5, and its annual traffic volume is measured in the hundreds of carloads. All of MVRC's operations are concentrated in the immediate vicinity of Youngstown, Ohio, and as noted supra, the control transaction at issue would be exempt

automatically under 49 C.F.R. Part 1180.2(d) but for the fact that MVRC's tracks connect with those of C&P. Inasmuch as the Miscellaneous Asset Sale Procedures allow LTV to sell "relatively do minimal assets," such assets can and should be sold summarily. See Motion at 12. Under these circumstances, a finding that this transaction is limited in scope clearly is warranted. Finance Docket No. 32813, H. Peter Clausen and Linda C. Clausen -- Continuance In Control Exemption -- Live Oak, Perry & Georgia Railroad Company, Inc., Decision served March 29, 1996. See also Finance Docket No. 32657, Iron Road Railways Incorporated, Et Al. -- Control Exemption -- Bangor and Argoostook Railroad Company, Et. Al., Decision served September 12, 1996.

C. Regulation of the Transaction  
Is Not Needed to Protect Shippers  
From Abuse of Railroad Market Power

Inasmuch as Summit's proposed control over MVRC is limited in scope, it is not even necessary to consider whether closer scrutiny of the transaction is needed to protect shippers from abuse of railroad market power. 49 U.S.C. § 10502(a)(2)(A). Nevertheless, the relevant facts show that this alternative criterion is met as well.

Through this transaction, a small switching carrier which operates in a limited geographic area simply is being added to a

group of separate Class III carriers that already are controlled by Summit.<sup>3</sup> As noted ~~summit~~ there will be ~~no~~ change in MVRC's existing operations, and no shipper will lose rail service options as a result of the transaction.<sup>4</sup> In prior decisions, the Board has recognized these elements as indicative of the absence of any threat of market power abuse. See Finance Docket No. 33607, David W. Wulfsberg, Et Al. -- Control Exemption -- Clarendon & Pittsford Railroad Company, Et Al., Decision served August 20, 1998; Finance Docket No. 33846, Patrick A. Gilbertson, Et Al. and Southshore Corporation - Control Exemption - Illinois Indiana Development Company, LLC, Decision served April 26, 2000.

That the subject transaction is wholly innocuous from a market power standpoint is underscored by the fact that the entity that would sell its controlling interest in MVRC to Summit -- CVRC -- itself is a subsidiary of LTV, MVRC's principal shipper. It may be presumed that LTV perceives no potential for rail market power abuse resulting from this transaction, as LTV is a willing party to the

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<sup>3</sup> See Finance Docket No. 33501, Douglas M. Head, Et Al. - Continuance In Control Exemption - Portland Line, Inc., Decision served January 7, 1998.

<sup>4</sup> As noted, the more likely result is an enhancement of shippers' rail service options, as MVRC would move from being an isolated element of a larger corporate enterprise itself engaged in court-supervised reorganization, to an integrated member of an efficient and well-capitalized regional railroad family.

transfer of control. Indeed, LTV has promoted the sale of MVRC (among other non-core assets) to the Bankruptcy Court as being consistent with LTV's own long-term financial health. See Motion at 3-4.

D. Labor Protection

Summit submits that no employees of MVRC or any railroad currently controlled by Summit will be adversely affected by the transaction that is the subject of this petition. To the extent that the Board deems it legally necessary to prescribe labor protection conditions, however, the conditions imposed should be those established pursuant to New York Rock Railway -- Control -- Brooklyn Eastern District Terminal, 140 I.C.C. 60 (1979).

E. Environmental and Historic Impact

The Board's regulations governing general petitions for exemption under 49 U.S.C. § 10502 call for compliance with environmental or historic impact and notice requirements under 49 C.F.R. Part 1103, "if applicable." See 49 C.F.R. Part 1121.3(b).

Under 49 C.F.R. Part 1103.6(c)(2)(ii), no environmental documentation need be prepared for a control transaction (such as the instant) that will not result in (i) a traffic diversion from rail to motor carriage of more than 1000 carloads per year or 50 carloads per

mile; (2) a 100% increase in rail traffic or rail yard activity; (3) increases of more than 10% or 50 vehicles per day in truck traffic; or (4) prescribed level increases in rail or truck traffic in class I or non-attainment areas under the Clean Air Act. See 49 C.F.R. Part 1105.7(e)(4) and (5). Summit's acquisition of control over MVRC will not lead to any changes in rail operations, and is not expected to result in appreciable changes in traffic volumes. As such, the threshold criteria for environmental documentation summarized above will not be met, and no such documentation is required.

Similarly, 49 C.F.R. Part 1105.8(b)(3) provides that a control transaction that will not substantially change the level of maintenance of railroad property is exempt from regulations requiring the preparation of an historic report. As shown *supra*, the transaction in question contemplates no changes in MVRC's maintenance or operating profile. Therefore, the historic reporting rules are not applicable in this case.

F. Expedited Consideration of This  
Petition is Warranted

LTV has sought and secured conditional approval<sup>7</sup> from the Bankruptcy Court to sell MVRC and other non-core assets as promptly

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Court approval is conditional in the sense that consistent with the requirements of bankruptcy law, each sales transaction must be noticed separately to creditors, who then have a limited period (ten (10) business days) to object or comment on the transaction to the Court. See Motion at 6-9. On information and belief, that procedure will be followed with respect to the sale of MVRC.

as practicable in order to "streamline their operations and emerge from these cases a stronger and more efficient organization [by] selling a number of assets that are either unproductive or nonessential to their businesses." Motion at 3. According to LTV, it is in the company's long-term financial interest to consummate these sales as promptly as possible. As such, Summit and LTV would seek to close on the sale of MVRC as soon as practicable after expiration of the mandatory creditor notice period (see note 7, supra). Expedited approval of this Petition by the Board is essential to that end.

Expedited consideration and approval also is in the best interests of shippers who use and rely on MVRC's service. While LTV may be MVRC's largest shipper, it is not the only current or prospective customer, and the pendency of the LTV bankruptcy proceeding is a matter of public notice and knowledge. The longer

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\* On information and belief, this could occur within two (2) weeks. In such an event, Summit is prepared to have the stock of MVRC transferred to an independent voting trust pursuant to 49 C.F.R. Part 1013, pending Board action on this Petition. By letter dated March 26, 2001, Summit transmitted a Voting Trust Agreement to the Board for staff review and pre-approval under 49 C.F.R. Part 1013.3(a). A copy of this submission is attached as Exhibit No. 4. The temporary transfer of stock to a voting trust, however, delays realization of many of the benefits associated with the subject transaction, as Summit is precluded from taking control of MVRC and fully integrating it into Summit's regional railroad family so long as the trust remains in effect. The same public rail policy considerations that so clearly favor approval of the requested exemption likewise favor keeping the life of any associated voting trust as short as possible.

the time until the future of MVRC is settled with finality, the greater the anxiety and uncertainty among those dependent upon its service, and the higher the risk of traffic diversions or other adverse economic impacts on the communities adjacent to MVRC's lines. For these reasons, Summit respectfully requests that the Board move with alacrity to grant the Instant Petition.

CONCLUSION

For the reasons set forth herein and based upon the facts as verified by Summit's Vice-President Mr. William Strawn, Summit requests that its Petition be considered expeditiously and granted, and that pursuant to 49 U.S.C. §10502, the Board exempt Summit's acquisition of control of MVRC from the prior approval requirements of 49 U.S.C. § 11323, *et seq.*

Respectfully submitted,

SUMMIT VIEW, INC.  
136 South Fifth Street  
Coshocton, Ohio 43812

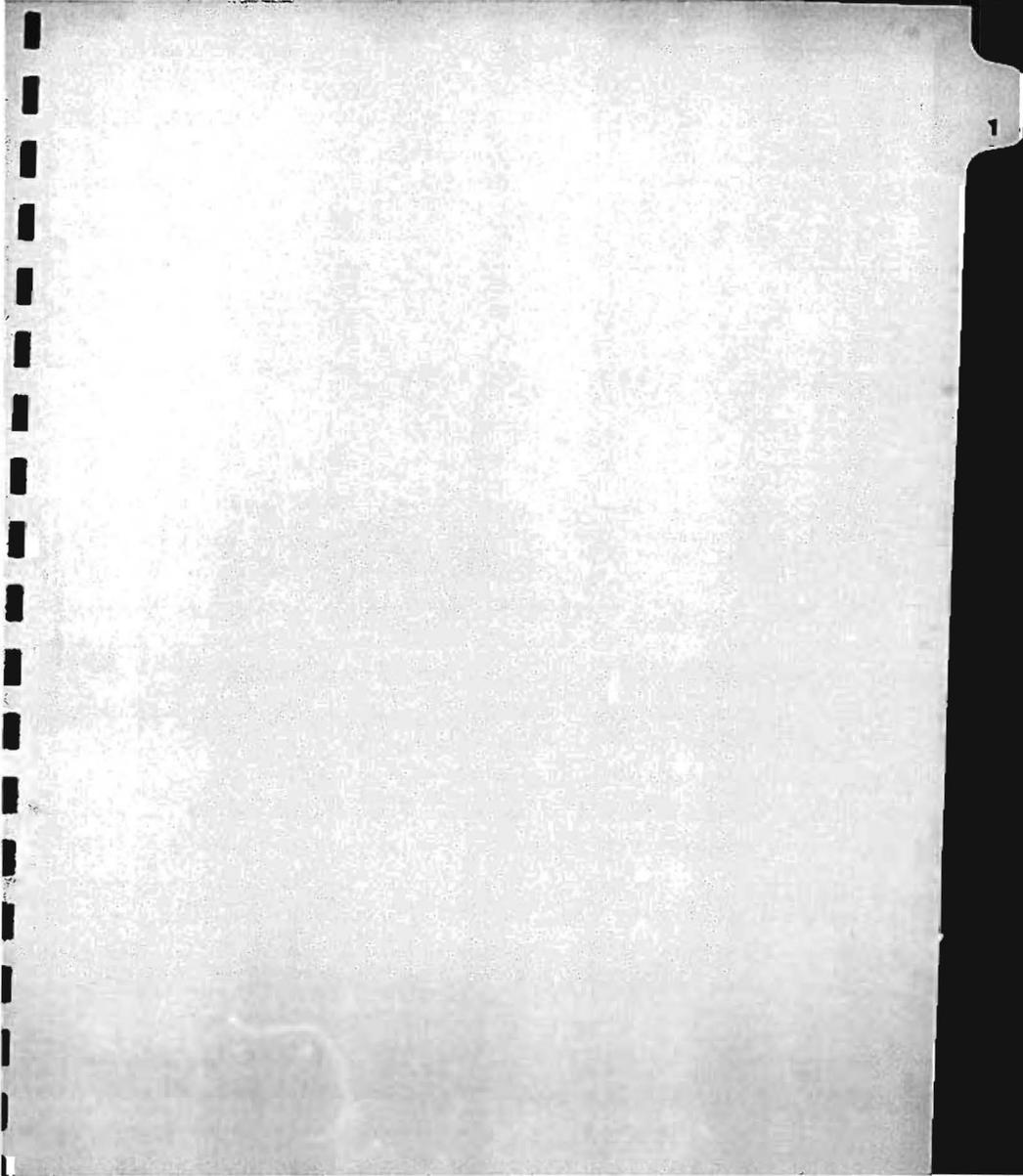
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Dated: April 6, 2001

Attorneys & Practitioners





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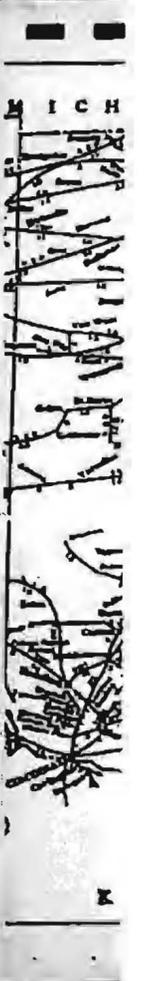


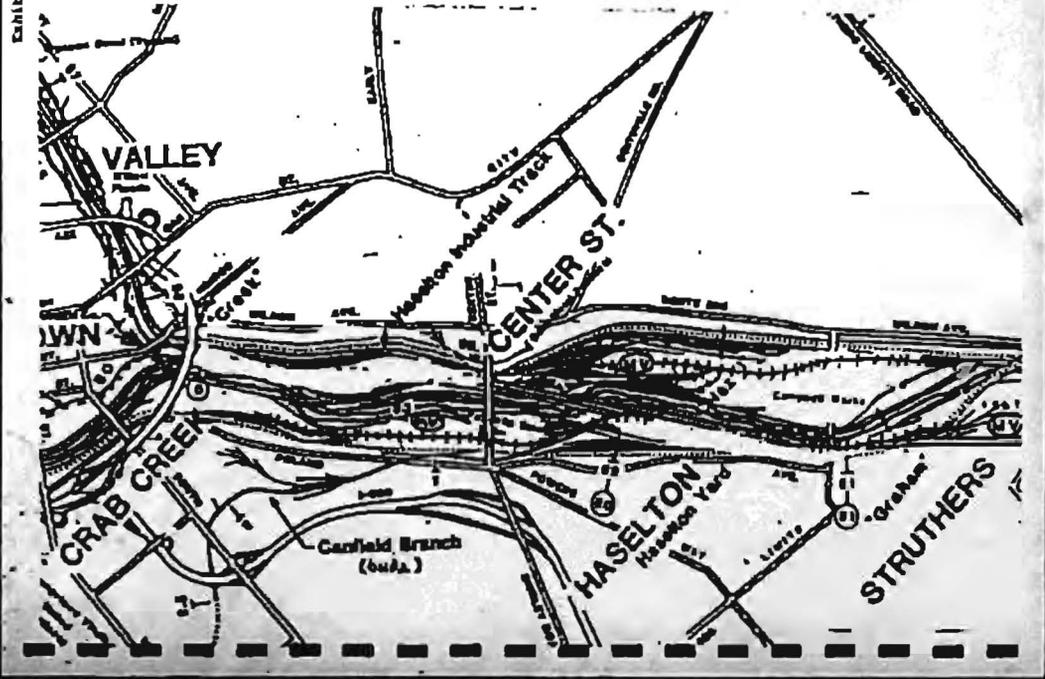


Exhibit No. 2



EXHIBIT No. 2

(MV) - DEMOTES AREAS OF  
TRACK AND OPERATIONS  
OF MARSHING VALLEY  
RAILROAD



In re  
LTV STEEL COMPANIES  
a New Jersey corporation

**MOTION  
FOR AN ORDER  
THAT BANKRUPTCY  
COMPLETION  
ASSUME  
ANY RELATED**

The above-  
"Debtors") hereby moves for  
an Order of the Bankruptcy Court  
approving procedures by which  
the Debtors will carry out their  
restructuring outside of the ordinary  
course of business and related  
restructuring contracts. Pursuant  
to this Motion, the Debtors request

1. On D  
their respective reorganizations  
under the Bankruptcy Code. They  
request that the Court approve  
the proposed reorganizations as  
having been completed for purposes

CA 85704-11

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re : Chapter 11  
LTV STEEL COMPANY, INC., : Jointly Administrated  
a New Jersey corporation, et al. : Case No. 00-43866  
Debtors. : Judge William T. Bodoh

U.S. DISTRICT COURT  
N.D. OHIO - CLEVELAND  
15 9 51

**MOTION OF DEBTORS AND DEBTORS IN POSSESSION  
FOR AN ORDER, PURSUANT TO SECTIONS 105, 363 AND 365 OF  
THE BANKRUPTCY CODE, ESTABLISHING PROCEDURES FOR  
COMPLETING (A) MISCELLANEOUS ASSET SALES AND (B) THE  
ASSUMPTION AND ASSIGNMENT OR REJECTION OF  
ANY RELATED EXECUTORY CONTRACTS AND UNPERFORMED LEASES**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby move this Court for the entry of an order, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), authorizing and approving procedures by which the Debtors may (i) consummate certain asset sales of limited size outside of the ordinary course of their business and (ii) assume and assign or reject any related executory contracts or unexpired leases, all without further Court approval. In support of this Motion, the Debtors respectfully represent as follows:

**Background**

1. On December 29, 2000 (the "Petition Date"), the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. By an order entered on the Petition Date, the Debtors' Chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly.

#568-1  
#568-2

2. The Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On January 10, 2001, the Office of the United States Trustee for the Northern District of Ohio (the "U.S. Trustee") appointed a statutory committee of unsecured creditors in these chapter 11 cases (the "Creditors' Committee"), pursuant to section 1102 of the Bankruptcy Code. On January 19, 2001, the U.S. Trustee appointed a statutory committee of noteholders (the "Noteholders' Committee"), pursuant to section 1102 of the Bankruptcy Code.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

5. Debtor LTV Steel Company, Inc., a New Jersey corporation ("LTV Steel"), among other things: (a) owns and operates a coke production plant in Warren, Ohio; and (b) maintains the headquarters of its tubular products division in Youngstown, Ohio. Debtor The LTV Corporation, a Delaware corporation, is the direct parent of LTV Steel and the direct or indirect parent of each of the other Debtors. The Debtors and their nondebtor affiliates (collectively, the "LTV Companies") are (a) leading domestic producers of integrated steel, (b) the largest producers of mechanical and structural steel tubing products in North America, (c) the world's largest producers of bimetallic wire products and (d) the second largest manufacturers of pre-engineered metal building systems in North America.

6. The LTV Companies operate through two primary business segments: Integrated Steel and Metal Fabrication. The Integrated Steel business segment manufactures and sells a diversified line of carbon flat-rolled steel products consisting of hot-rolled and cold-rolled sheet, galvanized and tin mill products. The Metal Fabrication business segment: (a) manufactures and sells mechanical and structural tubular products, pipe and conduit for use in

transportation, agriculture, oil and gas and construction industries; (b) produce bimetallic wire for the telecommunications and utilities industries; and (c) engineer and manufacture pre-engineered, low-rise steel building systems for manufacturing, warehousing and commercial applications. In addition, the LTV Companies own interests in steel-related joint ventures, including Trico Steel Company, L.L.C., which operates a steel coil-mill. The LTV Companies currently maintain business operations throughout the United States and abroad.

7. The LTV Companies currently employ approximately 17,500 employees, of which approximately 11,500 work in the Integrated Steel business segment and approximately 6,000 work in the Metal Fabrication business segment. Approximately 12,300 of these employees are represented by unions. As of September 30, 2000, the LTV Companies had approximately \$5.8 billion in assets and approximately \$4.7 billion in liabilities on a consolidated basis.

#### **Relief Requested and Grounds Therefor**

8. In connection with the day-to-day operation of their businesses, the Debtors maintain a substantial and diverse array of assets, including real, personal and intangible property. To streamline their operations and emerge from these cases a stronger and more efficient organization, the Debtors anticipate selling a number of assets that are either unproductive or nonessential to their businesses. The Debtors believe that these sales will involve non-core assets that, in most cases, will be relatively insignificant in value compared to the Debtors' total asset base. Nevertheless, many of these asset sales may constitute transactions outside of the ordinary course of the Debtors' businesses that ordinarily would require individual Court approval, pursuant to section 363(b)(1) of the Bankruptcy Code.<sup>11</sup>

<sup>11</sup> Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, (continued...)"

9. Requiring Court approval of each such miscellaneous asset sale would be administratively burdensome to the Court and costly for the Debtors' estate, especially in light of the relatively insignificant value of the assets involved in these transactions. In certain cases, the costs and delays associated with seeking individual Court approval of a sale potentially would eliminate, or substantially diminish, the economic benefits of the transaction. To lessen these burdens and costs, the Debtors hereby seek the approval of the procedures described below (the "Miscellaneous Sale Procedures") to complete miscellaneous asset sales that fall within certain economic parameters, which also may include the assumption and assignment or rejection of related executory contracts or unexpired leases. The Debtors propose to utilize the Miscellaneous Sale Procedures to obtain more expeditious and cost-effective review by interested parties, in lieu of individual Court approval, of certain sales involving less valuable non-core assets. In addition, because of the relative size of such assets, the Debtors do not intend to obtain or update, as applicable, appraisals of any such assets. All other sale transactions outside of the ordinary course of the Debtors' businesses would remain subject to individual Court approval under section 363(b)(1) of the Bankruptcy Code.

**The Proposed Miscellaneous Sale Procedures**

10. The Debtors propose to implement the Miscellaneous Sale Procedures on the terms described below.

**Transactions Subject to the Miscellaneous Sale Procedures**

11. The Miscellaneous Sale Procedures will apply only to private asset sale transactions (collectively, "Private Sales") or, in certain limited instances, public auctions

(continued)

may use, sell, or lease, other than in the ordinary course of business, property of the estate.  
11 U.S.C. § 363(b)(1).

primarily of real estate assets (collectively, "Auctions"), involving, in each case, (a) transfers of less than \$3,000,000.00 in total consideration (the "Sale Cap"), except as described below for certain Auctions; and (b) aggregate cure costs of less than \$500,000.00 in connection with the assumption and assignment of any related executory contracts or unexpired leases. The Debtors believe that their existing and future cash collateral and postpetition financing arrangements (collectively, the "Financing Arrangements") may involve certain requirements or limitations on asset sales. The Miscellaneous Sale Procedures are not intended to modify, and are expressly subject to, any requirements or limitations imposed under the documents establishing the Financing Arrangements (including any Court orders approving such financing arrangements) (collectively, the "Financing Documents").

12. Under the Miscellaneous Sale Procedures, the Debtors will be permitted to sell assets that are encumbered by liens, encumbrances or other interests only if those liens and interests (a) can be extinguished, (b) are waived at the time of sale or (c) are capable of monetary satisfaction. Furthermore, the Debtors will be permitted to sell assets co-owned by a Debtor and a nondebtor party pursuant to the Miscellaneous Sale Procedures only to the extent that the sale does not violate section 363(h) of the Bankruptcy Code.<sup>27</sup>

<sup>27</sup> Section 363(h) of the Bankruptcy Code provides in pertinent part:

[T]he trustee may sell both the estate's interest . . . and the interest of any co-owner in property . . . only if—

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) the sale of the estate's undivided interest in such property would realize significantly less for the estate than the sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such

(continued...)

11. The Miscellaneous Sale Procedures specifically are not intended to encompass routine sales of obsolete or unnecessary equipment that, prior to the Petition Date, the Debtors conducted, and continue to conduct, in the ordinary course of their businesses. The Debtors complete such ordinary course sales primarily through Link Industrial Services, Inc. ("Link"), a company specializing in such miscellaneous equipment sales, pursuant to the terms of a contract, dated October 13, 2004, between LTV Steel and Link (the "Link Contract"). The Debtor believes that the sales conducted under the Link Contract are ordinary course transactions under section 363(f) of the Bankruptcy Code, which do not require further court approval or the review of other parties pursuant to the Miscellaneous Sale Procedures.

*Notice and Opportunity to Object*

14. After a Debtor enters into a contract or contracts contemplating a Private Sale or determination to conduct an Auction that, in either case, falls within the parameters of the Miscellaneous Sale Procedures (a "Proposed Sale"), the Debtor will file a notice of the Proposed Sale (the "Sale Notice") with the Court and serve the Sale Notice, by overnight delivery or telecopy, on the following parties (collectively, the "Interested Parties"): (a) counsel to the

(continued)  
property free of the interests of co-owners  
notwithstanding the debtors, if any, to such co-owners;  
and

(4) such property is not used in the  
production, transmission, or distribution, for sale, of  
electric energy or of natural or synthetic gas for  
heat, light, or power.

11 U.S.C. § 363(f).

A copy of the Link Contract is attached hereto as Exhibit A and incorporated herein by reference. By this Notice, the Debtors are not seeking to ensure the Link Contract under section 363 of the Bankruptcy Code and specifically reserves all of their rights with respect to the treatment of the Link Contract in these cases.

Ordinary' Commercial; (b) consent to the Noteholder' Committee; (c) any other consents specified in these cases under Section 11 (2) of the Bankruptcy Code; (d) any lenders under the Financing Arrangements (collectively, the "Lenders") in accordance with the terms of the Financing Documents; (e) consent to the administrative agent for the Debtors' participation secured Lenders (the "Administrative Agent"); (f) all known parties holding or asserting liens on or other interests in the assets that are the subject of the Proposed Sale; (g) the proposed purchasers if the transaction is to be completed by Private Sale; and (h) if applicable, the applicable parties to all security contracts and assigned leases that the Debtors propose to assume and assign or reject in connection with the Proposed Sale.

1.4. The Sale Notice will include the following information regarding the Proposed Sale:

- a description of the assets that are the subject of the Proposed Sale and their location or locations;
- either (a) for a Private Sale, the identity of the immediate party or parties to the Proposed Sale and any relationships of that party or parties with the Debtor; or (b) for a sale by Auction, the date, time and place of the Auction and the minimum acceptable bid for the asset to be sold at the Auction (the "Minimum Bid");
- the identities of any parties holding liens on or other interests or potential interests in the assets to be sold known by the Debtor, and a statement indicating that all such liens or interests (a) can be extinguished, (b) are waived at the time of sale or (c) are capable of necessary satisfaction;
- the primary economic terms and conditions of the Proposed Sale if the transaction is to be completed by a Private Sale and any terms and conditions of sale to be imposed at an Auction;
- a schedule of the security contracts and assigned leases. If any, that the applicable Debtor or Debtors propose to assume and assign or reject in connection with the Proposed Sale and any cure covenants that the

This information may be provided by attachment of the applicable binding letter of intent, contract or contracts, auction notice or similar documents to the Sale Notice.

applicable Debtor or Debtors purposes with respect to each contract or lease to be assigned and assigned (collectively, "Core Claims");

- whether, in the Debtor's view, any Lender's consent to, or any governmental or regulatory approval of, the Proposed Sale is required; and
- any business consistent with the procedures described below to assert potential objections to the Proposed Sale (collectively, "Objections").

If the sale transaction is to be completed at an Auction, the applicable Debtor or Debtors will file with the Court and serve upon the Interested Parties a report of the results of the Auction within ten days of the conclusion of the Auction.

16. Interested Parties will have ten business days (the "Notice Period") to object to the Proposed Sale, pursuant to the objection procedures described below. In addition, prior to the expiration of the Notice Period, any applicable Lender must either give its consent to the Proposed Sale or assert an Objection to the Proposed Sale. If no Objections are properly asserted prior to the expiration of the Notice Period, the relevant Debtor or Debtors will be authorized, without further notice and without further Court approval or Lender consent, to: (A) either (i) for assets to be sold by Private Sale, consummate the Proposed Sale in accordance with the terms and conditions of the underlying contract or contracts or (ii) for assets to be sold at Auction, conduct the Auction and sell the assets at the Auction, *provided that* no sale at an Auction may be completed for consideration below the Minimum Bid identified in a Sale Notice<sup>8</sup> and (B) assume and sell on to the purchaser or purchasers or reject, as applicable, any related executory contracts or unexpired leases. Any such assumption and assignment or

<sup>8</sup> If no Interested Party files an Objection to the Minimum Bid proposed for an Auction, or any such Objections are resolved so that the Auction may proceed, the Debtors may sell the assets at issue at the Auction for any price above the Minimum Bid, even if the sale price exceeds the Sale Cap.

rejection shall be deemed to be effective only on the date of the closing of the Proposed Sale, unless a different date is proposed in a Sales Notice.<sup>17</sup>

17. If any significant economic terms of a Proposed Sale are awarded after termination of the Sale Notice but before expiration of the Notice Period, the applicable Debtor or Debtors will send a revised Sales Notice to all Interested Parties describing the Proposed Sale, as amended. If a revised Sales Notice is sent, the Notice Period will be extended until the expiration of ten business days following the date of transmission of the revised Sales Notice.

18. In addition, the relevant Debtor or Debtors may consummate a Proposed Sale to be completed by Private Sale or conduct an Auction prior to expiration of the applicable Notice Period if the Debtor or Debtors obtain such Interested Party's written consent to the Proposed Sale. The applicable Proposed Sale, including the assignment and assignment or rejection of ancillary contracts and unexpired leases proposed in connection with the sale, will be deemed (a) final and fully authorized by the Court and (b) to be in compliance with, and not in violation of, the Financing Documents,<sup>18</sup> upon either (1) for a Private Sale, (A) the expiration of the Notice Period without the assertion of any Objections or (B) the written consent of all Interested Parties; or (2) for a sale by Auction, (A) the expiration of the Notice Period without the assertion of any Objections or the written consent of all Interested Parties and (B) the Debtor's acceptance of a qualifying bid in excess of the Minimum Bid at the Auction.

<sup>17</sup> This authorization also will override the need to seek any "Certification of No Objections to Sale" under Local Bankruptcy Rule 6004-1.

<sup>18</sup> Because consent to any Lender will be served with Sales Notice, each Lender will be in a position prior to the expiration of the Notice Period to evaluate whether the Proposed Sale (a) complies with the applicable Financing Documents and (b) requires the Lender's affirmative consent.

*Objection Procedures*

19 Any Objections to a Proposed Sale must be in writing, filed with the Court and served on the other Interested Parties and counsel to the Debtors so as to be received prior to the expiration of the Notice Period. Each Objection must state with specificity the grounds for objecting to the Proposed Sale. If an Objection to a Proposed Sale is properly filed and served, the Proposed Sale may not proceed absent withdrawal of the Objection or the entry of an order of the Court specifically approving the Proposed Sale (including approval to conduct an Auction). Any Objections may be resolved without a hearing by an order of the Court submitted on a consensual basis by the applicable Debtor or Debtors and the objecting party (a "Consent Order"); provided, however, that if any "significant economic terms of the Proposed Sale are modified by the Consent Order, the applicable Debtor or Debtors, prior to submission of the Consent Order, must (a) provide the Interested Parties with five business days' prior notice of the Consent Order and an opportunity to object to the terms of the Consent Order by providing a written statement of objection to the Debtors' counsel; and (b) certify to the Court that (i) such notice was given and (ii) no Interested Party asserted an Objection to the Consent Order. If an Objection is not resolved on a consensual basis, the applicable Debtor or Debtors or the objecting party may schedule the Proposed Sale and the Objection for hearing at the next available regular hearing date to those cases by giving at least ten days' written notice of the hearing to each of the Interested Parties.

*Order Terms of Proposed Sales*

20. All buyers will take assets sold by the Debtors pursuant to the Miscellaneous Sales Procedures "as is" and "where is," without any representations or warranties from the Debtors as to the quality or fitness of such assets for either their intended or any particular purpose. Buyers, however, will take title to the assets free and clear of liens, claims,

encumbrances and other interests, pursuant to section 363(f) of the Bankruptcy Code. All such liens, claims, encumbrances and other interests will attach to the proceeds of the sale.

#### Argument

##### *Approval of Proposed Sales as Shortened and Limited Notice*

21. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may sell assets outside of the ordinary course of its business "after notice and a hearing."

11 U.S.C. § 363(b)(1). This "notice" required by section 363(b)(1) of the Bankruptcy Code is "such notice as is appropriate in the particular circumstances." 11 U.S.C. § 102(1)(A). Courts are authorized to shorten the 20-day notice period generally applicable to asset sales, or direct another method of giving notice, upon a showing of "cause." Bankruptcy Rule 2002(a)(2).

Moreover, courts are authorized to limit notice of asset sales and uses of property outside of the ordinary course of the debtor's business, even without a prior showing of cause, to any official committee appointed under section 1102 of the Bankruptcy Code and any creditor or equity holder requesting notice. See Bankruptcy Rule 2002(f).

22. Due process "requires that any notice is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullins v. Central Homeowner Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Creditors are only entitled to notice "reasonably calculated to apprise the creditor of the pendency of the bankruptcy proceeding and give the creditor an opportunity to object or otherwise respond." *In re Rinechase Apartments I, P.*, 184 B.R. 35, 39 (Bankr. M.D. Tenn. 1995). In sum, if basic due process is afforded to interested parties and appropriate cause is established, a court may determine that shortened or limited notice of an asset sale is appropriate.

23. The Debtors seek the approval of the Miscellaneous Sale Procedures to maximize the net value realized from sales of relatively *de minimis* assets. The Debtors believe that these procedures will accommodate the assets and timely consummation of such asset sales. The Debtors also believe that, under the circumstances, the usual process of obtaining Court approval of each Proposed Sale that would be subject to the Miscellaneous Sale Procedures (A) would impose unnecessary administrative burdens on the Court; (B) would create costs to the Debtor's estate that may diminish or eliminate the economic benefits of the underlying transactions; and (C) in some instances, may hinder the Debtor's ability to take advantage of sale opportunities that may be available only for a limited time. Therefore, the Debtors propose to streamline the process and shorten the applicable notice periods as described herein. The Debtors believe that: (A) the shortened notice provisions of the Miscellaneous Sales Procedures will make the sale process as efficient as possible, while preserving fully the rights of Interested Parties; and (B) therefore, sufficient cause exists to implement the Miscellaneous Sale Procedures. The shortened notice period also comports with Local Bankruptcy Rule 9013-1 governing the filing of objections to motions by providing greater than ten days to file objections.

24. The Debtors also request that limiting services of Sales Notices to Interested Parties be justified under the circumstances. The Interested Parties represent the key parties to impact in these chapters 11 cases and the parties with the greatest interest in the underlying transactions. In particular, Sales Notices would be served on: (A) the primary parties representing the interests of unsecured creditors and the Debtor's estate (i.e., counsel to both the Creditors' Committee and the Holders' Committee); (B) the primary secured creditors and production lenders in these cases (i.e., the Lenders and the Administrative Agent); (C) the other parties with potential interests in the assets at issue (i.e., known holders of liens, claims, counterclaims and

other interests in the assets); (d) the parties to executory contracts and unexpired leases proposed to be assumed and assigned or rejected, if any; and (e) the proposed purchaser of the assets at issue if the transaction is to be completed by a Private Sale. Under the circumstances, the Debtors believe that this manner of notice is appropriate and fully preserves necessary due process rights.

*Approval of Transactions Without a Hearing*

25. Asset sales may be authorized without conducting an actual hearing, if no party in interest timely requests such a hearing. See 11 U.S.C. § 102(1)(B)(i) (notwithstanding any statutory requirement for "notice and a hearing," the Bankruptcy Code "authorizes an act without an actual hearing if such notice is given properly and if such hearing is not requested timely by a party in interest"). Due process is satisfied if parties in interest are given "an opportunity to present their objections." *Mulline*, 339 U.S. at 314 (emphasis added). Moreover, Local Bankruptcy Rule 9013-1(d) supports this proposition by providing that the "[f]ailure to file a response on a timely basis may be cause for the Court to grant the motion or application as filed without further notice."

26. Further, bankruptcy courts in this District and in other jurisdictions have approved asset sales pursuant to section 363 of the Bankruptcy Code without finding it necessary to enter specific orders approving such sales. See, e.g., *In re Elrod*, 202 B.R. 590, 591 (Bankr. N.D. Ohio 1996) ("A trustee need not file a motion to sell free and clear of liens where the trustee has provided proper notice of a proposed sale under § 363(f) and no objections have been filed"); *In re Council*, 225 B.R. 334, 335-36 (Bankr. E.D. Mich. 1997) (finding no need for a court order to approve sale of an automobile in an individual chapter 7 case on the grounds that no objections were filed to the sales notice); *In re Hamline*, 8 B.R. 449, 450 (Bankr. N.D. Ohio 1981) (denying a trustee's request for an order approving sale of real property on the grounds that

no order is necessary if no party objected to the proposed sale). The Debtors, therefore, believe that the Miscellaneous Sale Procedures fully comply with the requirements of due process by providing Interested Parties with ample opportunity to present Objections and request a hearing on each Proposed Sale. Accordingly, the Miscellaneous Sale Procedures comply with the hearing requirements of section 363(b)(1) of the Bankruptcy Code and the Local Bankruptcy Rules.

27. Similarly, in light of (a) the demonstrable benefits of streamlined procedures to sell non-core assets of relatively insignificant value and dispose of any related executory contracts or unexpired leases and (b) the legal precedent described in the preceding paragraph, procedures similar to the Miscellaneous Sale Procedures have been approved by courts in other large chapter 11 cases. See, e.g., *In re Pillowtex Corp.*, No. 00-4211 (SLR) (D. Del. Feb. 6, 2001) (approving similar procedures for the sale of assets up to \$750,000); *In re Purina Mills, Inc.*, No. 99-3938 (SLR) (D. Del. Dec. 15, 1999) (approving similar procedures for the sale of assets up to \$350,000); *In re Tultex Corp.*, No. 99-03626 (Bankr. W.D. Va. Feb. 3, 2000) (approving similar procedures for the sale of assets up to \$100,000); *In re Loewen Group Int'l, Inc.*, No. 99-1244 (PJW) (Bankr. D. Del. Aug. 23, 1999) (approving similar procedures for the sale of assets up to \$2 million); *In re Montgomery Ward Holding Corp.*, No. 97-1409 (PJW) (Bankr. D. Del. Aug. 26, 1997) (approving similar procedures for the sale of assets up to \$1 million).<sup>27</sup>

<sup>27</sup> Copies of these unreported orders are attached hereto collectively as Exhibit B and are incorporated herein by reference.

*Sales Free and Clear of Liens*

28. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party's interest in the property if (1) applicable nonbankruptcy law permits such a free and clear sale, (2) the holder of the interest consents, (3) the interest is a lien and the sales price of the property exceeds the value of all liens on the property, (4) the interest is in bona fide dispute or (5) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest.

29. Assets encumbered by interests held by other parties may be sold pursuant to the Miscellaneous Sale Procedures only if the interests (a) can be extinguished, (b) are waived at the time of sale or (c) are capable of monetary satisfaction. Accordingly, the requirements of section 363(f) of the Bankruptcy Code would be met under the Miscellaneous Sales Procedures for a sale free and clear of liens, claims, counterclaims and other interests. Moreover, as noted above, the Debtors propose that such interests attach to the proceeds of the applicable sale.

*Approval of Assumption and Assignment or Rejection, as Applicable, of Existing Contracts and Unexpired Leases*

30. The standard for a debtor to assume and assign or reject an executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code is whether the debtor's decision is made within its sound business judgment. See, e.g., *Burman's, Inc. v Allied Supermarkets, Inc.*, 706 F.2d 157, 189 (6th Cir.) ("As a general rule, a bankruptcy court presented with an application to determine the obligations of an executory contract need determine only whether it is a sound business decision and whether circumstances would be advantageous to the debtor.") (citations omitted), cert. denied, 467 U.S. 908 (1983). The Debtors anticipate that certain Proposed Sales will require a Debtor to dispose of executory contracts or unexpired leases that are referred to the assets to be sold. As part of the negotiations with the purchaser or

purchasers of the assets, the applicable Debtor may need to determine whether the purchaser will also assignment of such contracts or leases that are assignable under applicable nonbankruptcy law or whether the Debtor instead should reject any such contracts or leases. Because the applicable Debtor's determination to assume and assign or reject any such contracts or leases will be made in consultation with a sale of assets that will advise the Debtor's need for any related contracts or leases, the Debtors believe that any such determination will fall squarely within their business judgment and will be made in the best interests of such Debtor's estate and creditors. Moreover, under the Miscellaneous Sales Procedures, the assumption and assignment or rejection of any contracts or leases will be accomplished only after providing notice (including the amount of any Cash Claims) to the nondebtor parties to such contracts and leases and all other Interested Parties, with an opportunity to object. Accordingly, the requirements of section 365 of the Bankruptcy Code will be satisfied under the Miscellaneous Sales Procedures.

31. For all of the reasons described herein, the Debtors submit that the requested relief is appropriate under section 105(a) of the Bankruptcy Code, which provides in relevant part that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

#### Notice

32. No trustee or creditor has been appointed in these Chapter 11 cases. Notice of this Motion has been given to (a) the U.S. Trustee, (b) counsel to the Creditors' Committee, (c) counsel to the Nonbankruptcy Committee, (d) the Administrative Agents and (e) the parties that have filed requests for notices in these cases. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

**No Prior Request**

33. No prior request for the relief sought in this Motion has been made to this or any other court in connection with these chapter 11 cases.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit C: (i) approving and authorizing the implementation of the Miscellaneous Sale Procedures described herein, pursuant to sections 105,

363 and 365 of the Bankruptcy Code; and (ii) granting such other and further relief as the Court may deem proper.

Dated: February 28, 2001

Respectfully submitted,



David G. Heiman (0038271)  
Richard M. Cieri (0032464)  
Heather Lammox (0059649)  
JONES, DAY, REAVIS & POGUE  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
(216) 586-3939

Jeffrey B. Eilman (0055558)  
JONES, DAY, REAVIS & POGUE  
1900 Huntington Center  
41 South High Street  
Columbus, Ohio 43215  
(614) 469-3939

ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

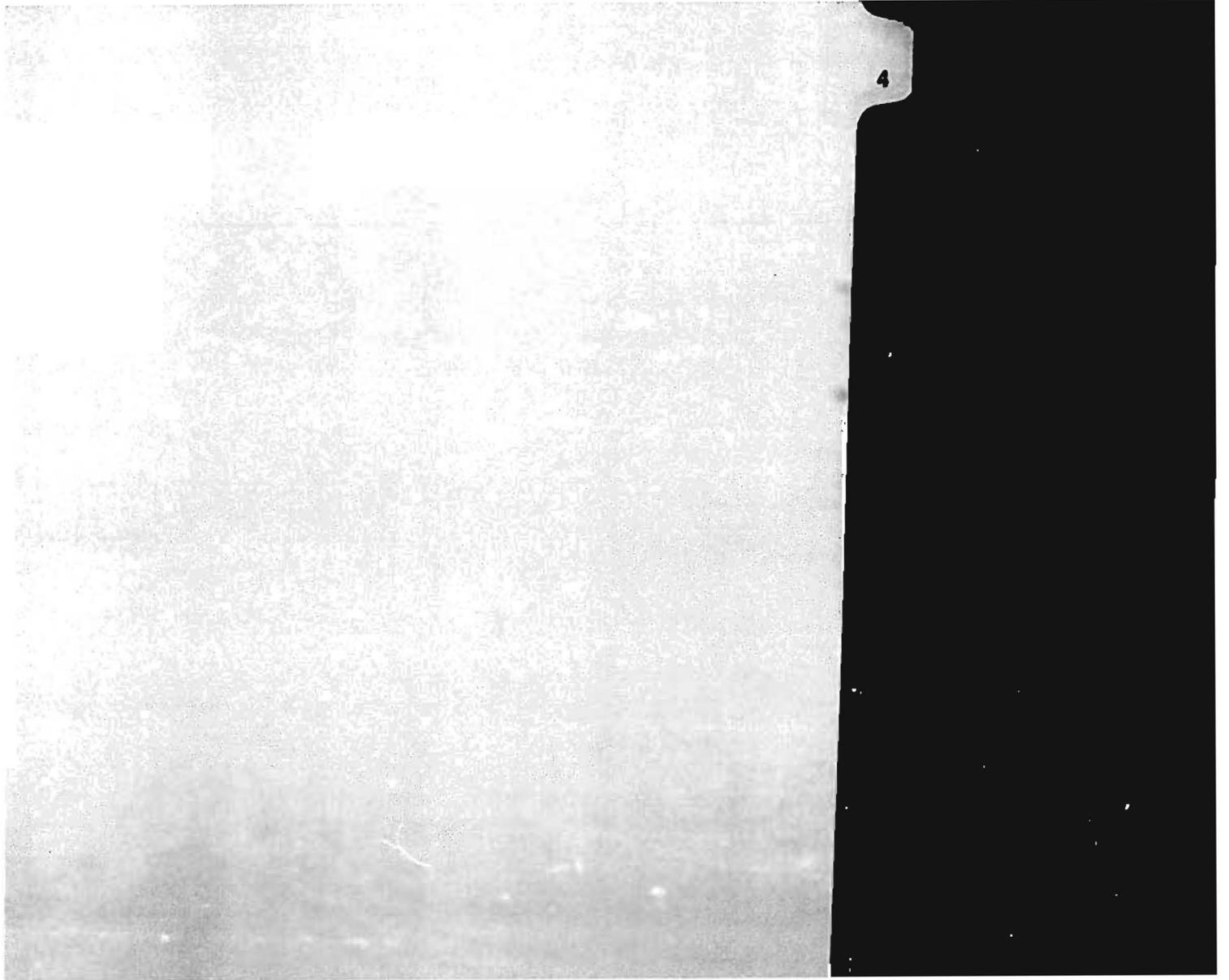


Exhibit No. 4

**SLOVER & LOFTUS**

ATTORNEYS AT LAW  
2000 REVERENDS DRIVE, N.W.  
WASHINGTON, D.C. 20009

**STAMP & RETURN**

WILLIAM L. SLOVER  
C. MICHAEL MOYER  
DONALD B. AVERY  
JOHN W. LE SURE  
KELVIN J. BOWE  
ROBERT D. BRIDGEMAN  
CHRISTOPHER A. WOLLE  
FRANK J. PERROZZI  
ANDREW B. HENNINGER  
VICTOR A. FURIEL  
DARREN M. GAFFA

TELEPHONE:  
202 543-7900  
FAX:  
202 543-0260  
WRITER'S E-MAIL:

March 28, 2001

[lsloves@slloverloftus.com](mailto:lsloves@slloverloftus.com)

**VIA HAND DELIVERY**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Case Control Unit  
1925 K Street, N.W.  
Washington, D.C. 20423-0001



Re: Finance Docket No. 34826, Summit View, Inc. --  
Control -- Mahoning Valley Railroad Company --  
Exemption from 49 U.S.C. 51123 (Approval of  
Irrevocable Voting Trust)

Dear Secretary Williams:

On behalf of Summit View, Inc., and pursuant to 49 C.F.R. Part 1013.3(a), we are submitting ten (10) copies of a Voting Trust Agreement for informal staff review and a non-binding opinion that the Agreement effectively insulates the settlor from any unauthorized acquisition of control of a regulated carrier.

Summit View is a non-carrier holding company that is negotiating to acquire control of the Mahoning Valley Railroad Company, a Class III carrier currently owned by Cuyahoga Valley Railway Company, a wholly-owned subsidiary of LTV Steel Company. Because Summit View already controls other carriers, Board approval or exemption will be required before Summit View can exercise control over MVRC. Very shortly, Summit View intends to file an appropriate Verified Petition for Exemption under 49 U.S.C. 510502 and 49 C.F.R. Part 1121, to secure the necessary control authority. For various reasons, however, it may be necessary for the parties to close the acquisition transaction before the Board rules on Summit View's Petition. In that event, and to prevent an authorized assumption of control over MVRC, Summit View plans to enter into the enclosed Agreement to create an irrevocable voting

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KJD.  
Encl  
cc:

The Honorable Vernon A. Williams  
March 28, 2001  
Page 2

trust, in which the stock of NVRC would be held pending Board action in response to the Petition.

We respectfully request that the enclosed be reviewed and the non-binding opinion rendered as promptly as possible. It is expected that the various agreements evidencing the transaction will be executed this week, and that the need to utilize the voting trust may arise prior to April 15, 2001.

Please acknowledge receipt of this letter and the Agreement by stamping the enclosed duplicate of this letter and returning it to our messenger.

Thank you for your attention to this matter.

Respectfully submitted,

  
Kelvin J. Dowd  
An Attorney for  
Summit View, Inc.

KJD/cbh  
Enclosure

cc: Mr. David N. Konechnik, Ofc. of Proceedings (w/enclosure)  
Mr. Joseph Detmar, Ofc. of Proceedings (w/enclosure)  
Mr. William A. Strawn (w/enclosure)  
Rose-Michele Weinryb, Esq. (w/enclosure)

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VOTING TRUST AGREEMENT

THIS VOTING TRUST AGREEMENT is made as of the \_\_\_ day of January, 2001,  
by and between Summit View, Inc., an Ohio corporation ("Summit") and \_\_\_\_\_, a  
\_\_\_\_\_ corporation ("Trustee").

WITNESSETH:

WHEREAS, it is intended that Summit will complete a purchase of the outstanding  
shares of stock of the Mahoning Valley Railroad Company ("MVRC") pursuant to a Stock Purchase  
Agreement among Summit, MVRC and The Caychoga Valley Railway Company, a copy of which is  
attached hereto as Exhibit A; and

WHEREAS, it is intended that consummation of the purchase of MVRC will occur  
prior to the issuance by the Surface Transportation Board ("STB") of any required approval or  
exemption with respect to Summit's acquisition of control over MVRC; and

WHEREAS, Summit intends, simultaneously with the acquisition of the stock of  
MVRC, to cause the deposit of such shares in an independent, irrevocable voting trust pursuant to the  
rules of the STB codified at 49 C.F.R. Part 1013, in order to avoid any allegation or assertion that  
Summit is controlling or has the power to control MVRC prior to receipt of any requisite STB approval  
or exemption; and

WHEREAS, neither Trustee nor any of its affiliates or subsidiaries has any officers or  
board members in common with Summit or any of its affiliates, or any common or direct or indirect  
business arrangements that could be construed as allowing Summit to exercise control over Trustee;  
and

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WHEREAS, Trustee is willing to act as a voting trustee pursuant to the terms of this Agreement and the applicable rules of the STB;

NOW, THEREFORE, the parties hereto agree, as follows:

1. Summit hereby appoints \_\_\_\_\_ as Trustee hereunder, and Trustee accepts such appointment and agrees to act under this Agreement as provided herein.

2. Summit agrees that prior to acceptance of any tendered shares of MVRRC pursuant to the Stock Purchase Agreement, Summit will direct the depository for the shares to transfer same to Trustee upon acceptance of payment therefor pursuant to the Stock Purchase Agreement. All shares shall be endorsed or accompanied by proper instruments duly executed for transfer thereof to Trustee, and shall be exchanged for Voting Trust Certificates in the form attached hereto as Exhibit B ("Trust Certificates"), with the blanks therein appropriately filled. All shares delivered to Trustee hereunder shall be called Trust Stock.

3. Trustee shall be present, in person or by proxy, at all annual and special meetings of MVRRC so that all Trust Stock may be counted for quorum and other purposes. Trustee shall be entitled and it shall be its duty to exercise all voting rights in respect of the Trust Stock, unless otherwise directed by an order of the STB or a court of competent jurisdiction. Summit and Trustee agree that Trustee shall not participate in or interfere with the management of MVRRC, and shall take no other action with respect to MVRRC except in accordance with the terms of this Agreement. Trustee shall vote all shares of Trust Stock in favor of any proposal or action necessary or desirable to give effect to the terms of the Stock Purchase Agreement and all other agreements entered by or on behalf

of MVRC in connection therewith, to advance the securing of any necessary STB approval or exemption for Summit's assumption of control of MVRC, and to dispose of Trust Stock in accordance with Paragraph 8 hereof. In all other respects, Trustee shall vote all shares of Trust Stock in Trustee's sole discretion, having due regard for the holder(s) of the Trust Certificates, determined without reference to such holder(s)' interests in railroads other than MVRC. The foregoing notwithstanding, a holder of a Trust Certificate may at any time, but only with the prior approval of the STB, instruct Trustee in writing to vote Trust Stock represented by such Trust Certificate in any manner, in which case Trustee shall vote the shares in accordance with such instructions. In exercising its voting rights, Trustee shall take such actions at all meetings by consent in lieu of a meeting.

4. This Agreement and the nomination of Trustee during the term of the trust shall be irrevocable by Summit and shall terminate only in accordance with the provisions of Paragraph 8 hereof.

5. Trustee shall not exercise the voting powers of Trust Stock in any way so as to create any dependence or intercorporate relationship between Summit and its affiliates, on the one hand, and MVRC, on the other. Trustee shall not, without prior approval of the STB, vote Trust Stock to elect any officer, director, nominee or representative of Summit or its affiliates or subsidiaries as an officer or director of MVRC, or enter into any common or direct or indirect business arrangement with Summit that could be construed as allowing Summit to exercise control over Trustee. Trustee shall not be liable for any mistakes of law or fact or any error of judgment in connection with the performance of its duties under this Agreement, or for any act or omission, except as a result of Trustee's willful misconduct or gross negligence.

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6. Trust Certificates shall be transferable on the books of Trustee by the holder thereof, in accordance with rules established by Trustee for the purpose. Until transferred, Trustee may treat the registered holder as owner for all purposes. Each transferee of a Trust Certificate shall, by his acceptance hereof, assent to and become a party to this Agreement.

7. Pending termination of the trust as herein provided, Trustee shall pay over all cash dividends or distributions as directed by the holder(s) of the Trust Certificates. Trustee shall receive and hold dividends and distributions other than cash upon the same terms as Trust Stock, and shall issue Trust Certificates representing any new or additional securities that may be paid as dividends on Trust Stock.

8. (a) In the event that the STB approves Summit's assumption of control over MVRC pursuant to 49 U.S.C. Section 11323, ~~et seq.~~, or grants an exemption from the requirement to secure such approval pursuant to 49 U.S.C. Section 10502, then immediately upon the direction of Summit and the delivery of a copy of the STB's order, or in the event that otherwise controlling law is amended to allow Summit to exercise control over MVRC without prior STB approval or exemption, Trustee shall transfer to or upon the order of the holder(s) of the Trust Certificates, all rights, title and interest in and to the Trust Stock, whereupon this Agreement automatically shall terminate.

(b) Unless sooner terminated pursuant to Paragraph 8(a), this Agreement shall terminate on January 30, 2004, and may be extended by the parties hereto so long as no violation of 49 U.S.C. Section 11323 will result from such termination or extension. All Trust Stock and any other property held by Trustee hereunder upon such termination shall be distributed on a pro rata basis to or

upon the order of the holder(s) of the Trust Certificates. Trustee may, in its reasonable discretion, require the surrender to it of the Trust Certificates before the release or transfer of the stock interests evidenced thereby.

(c) Except as provided in this Paragraph 8, Trustee shall not dispose of or in any way encumber the Trust Stock.

(d) The foregoing notwithstanding, if the STB issues an order that the termination of this Agreement will not cause Summit to have control of MVRC, Trustee shall transfer on a pro rata basis to or upon the order of the holder(s) of Trust Certificates all right, title and interest in and to the Trust Stock, whereupon this Agreement automatically shall terminate. Trustee may, in its reasonable discretion, require the surrender to it of the Trust Certificates before the release or transfer of the stock interest evidenced thereby.

9. Neither Trustee nor any affiliate or subsidiary of Trustee may have any officers or members of their respective boards of directors in common with Summit or any of its affiliates, nor shall it engage in any common or direct or indirect business arrangement with Summit that could be construed as allowing Summit to exercise control over Trustee. Neither Summit nor its affiliates or subsidiaries shall purchase the stock or securities of Trustee or any affiliate or subsidiary of Trustee.

10. Trustee shall be entitled to receive reasonable and customary compensation for all services rendered by it under this Agreement, and said compensation, together with all fees, taxes or other expenses reasonably incurred, shall be paid promptly by Summit. Trustee may at any time appoint agents and may delegate to such agents the performance of any administrative duty hereunder, and shall be entitled to reimbursement for the fees and expenses of such agents.

11. Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof if such agent or attorney shall have been selected with reasonable care. The duties and responsibilities of Trustee shall be limited to those expressly set forth in this Agreement. Trustee shall be fully protected by acting in reliance upon any notice, advice, direction or other document or signature believed by Trustee to be genuine. Trustee shall not be responsible for the sufficiency or accuracy of the form, execution, validity or genuineness of the Trust Stock or any other documents issued in connection with this Agreement, nor shall Trustee be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or purporting to execute or deliver such Trust Stock or other document, except for the execution and delivery of this Agreement by Trustee. Summit at all times will protect, indemnify and save harmless Trustee from any loss, damages, liability, cost or expense whatsoever in connection with this Agreement, except those, if any, resulting from the gross negligence or willful misconduct of Trustee, and will at all times undertake, assume full responsibility for, and pay on a current basis all costs and expenses subject to the sforescribed indemnification; provided, however, that Summit shall not be responsible for the cost and expense of any suit that Trustee settles without first obtaining Summit's written consent. The indemnification obligations of Summit shall survive any termination of this Agreement or the removal, resignation or replacement of Trustee. Trustee may consult with counsel selected by it and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or omitted or suffered by Trustee hereunder in good faith and in accordance with such opinions.

12. Trustee may resign at any time by giving sixty (60) days' written notice to Summit and to the STB. Summit shall at least fifteen (15) days prior to the effective date of such a notice appoint a successor trustee which shall satisfy the requirements of this Agreement. If no successor trustee shall have been appointed and shall have accepted appointment at least fifteen (15) days prior to the effective date of such notice of resignation, the resigning Trustee may petition any authority or court of competent jurisdiction for the appointment of a successor trustee. In the event of any material violation by Trustee of the terms and conditions of this Agreement, Trustee shall become disqualified from acting as trustee hereunder as soon as a successor trustee shall have been selected in the manner provided by this Paragraph.

13. This Agreement may be modified or amended by agreement executed by Summit and Trustee, in order to comply with any rule, regulation or order of the STB or upon the opinion of counsel for either party that such modification or amendment is necessary and consistent with all applicable regulations respecting voting trust agreements under 49 C.F.R. Part 1013.

14. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the state of Ohio, except that to the extent any provision hereof may be found inconsistent with the ICC Termination Act of 1995 or regulations promulgated thereunder by the STB, such Act and regulations shall control and such provision hereof shall be given effect only to the extent permitted by such Act or regulations.

15. This Agreement shall be binding upon the successors and assigns of the parties hereto, including without limitation successors to Summit by merger, consolidation or otherwise.

16. (a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be mailed by U.S. mail, certified mail with return receipt requested, or by Federal Express, Express Mail, or similar overnight delivery or courier service or delivered (in person or by telecopy) to the party to whom it is to be given at the address set forth below, or to such other address as the party shall have given notice of:

To Summit:

Summit View, Inc.  
136 South Fifth Street  
Coshocton, Ohio 43812  
Attn: Vice-President

To Trustee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) The addresses of the holders of Trust Certificates as shown on the Trustee's books shall in all cases be deemed to be the addresses of Trust Certificate holders for all purposes under this Agreement, without regard to what other or different addresses Trustee may have for any Trust Certificate holder. Every notice given by mail shall be deemed given as of the date of postmark.

17. Each party acknowledges and agrees that in the event of a breach of this Agreement, the non-breaching party would be immediately and irreparably harmed and could not be made whole by money damages. Accordingly, it is agreed that the parties hereto will waive the defense of an adequate remedy at law in any suit for specific performance, and shall be entitled to compel

specific performance of this Agreement in addition to any other remedy to which they might be entitled at law or in equity.

IN WITNESS WHEREOF, Summit View, Inc. and \_\_\_\_\_ have caused this Agreement to be executed by their respective and duly authorized representatives, as of the day and year first hereinabove written.

SUMMIT VIEW, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_