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STARR AUSTEN TRIBBETT MYERS & MILLER

Attorneys At Law

DONALD J. TRIBBETT

FILED

APR 26 2004

April 19, 2004

**SURFACE
TRANSPORTATION BOARD**

Via Hand Delivery

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

SCOTT L. STARR
JAMES H. AUSTEN
DONALD J. TRIBBETT*
JON M. MYERS
ANDREW B. MILLER
BOBBY J. AVERY-SEAGRAVE
*Also Admitted in Illinois



Re: Docket No. AB-290 (Sub-No. 168X),
Norfolk and Western Railway Company – Abandonment Exemption –
Between Kokomo and Rochester in Howard, Miami, and Fulton Counties, IN

Dear Secretary Williams:

Attached please find one duly-executed original accompanied by ten copies *plus* a 'File Copy' of the Petition for Reconsideration of Sam Hoover for filing with the Surface Transportation Board. The office of Sommer Barnard & Ackerson has kindly agreed to hand carry this filing to your office for filing on my behalf. Kindly time-stamp the 'File Copy' and return it to the Sommer Barnard & Ackerson representative by hand.

Thank you for your assistance.

ENTERED
Office of Proceedings

APR 26 2004

Part of
Public Record

Very truly yours,

Donald J. Tribbett

DJT/cks

Attachments

cc: Sam Hoover (With Attachment)

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APR 26 2004

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD



RE: NORFOLK AND WESTERN RAILWAY :
COMPANY – ABANDONMENT EXEMPTION – : Docket No. AB-290
BETWEEN KOKOMO AND ROCHESTER IN : Sub-No. 168X
HOWARD, MIAMI, AND FULTON COUNTIES, IN :

FILED

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TRANSPORTATION BOARD

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PETITION FOR RECONSIDERATION OF
SAM HOOVER

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APR 26 2004
SURFACE
TRANSPORTATION BOARD

Donald J. Tribbett
STARR AUSTEN TRIBBETT MYERS & MILLER
201 South Third Street
Logansport, IN 46947
Telephone: (574) 722-6676
Facsimile: (574) 753-3299

Counsel for Petitioner

Dated: April 19, 2004

Petitioner Sam Hoover (Hoover) owns land underlying the railroad right-of-way which is the subject of this proceeding before the Surface Transportation Board (the Board). Hoover respectfully seeks reconsideration of the Board's Decision and Notice of Interim Trail Use served March 10, 2004. The March 10 NITU is in error in several respects. In addition, Hoover was not notified of the relief sought from the Board in advance of the Board's action, and therefore Hoover's due process rights have been violated.

FACTUAL BACKGROUND

By its decision of May 14, 1996, the Board granted Norfolk and Western Railway Company's (N&W) request for exemption for the abandonment of a segment of rail line between milepost I-57.2 at or near Kokomo, Indiana, and I-74.2 at Peru, Indiana, and granted to the Indiana Trails Fund, Inc. (ITF) a Notice of Interim Trail Use. However, the Board expressly took no action with regard to the remaining segment of line between milepost I-74.2 and milepost I-95.6 due to existing trackage rights of Indiana Hi-Rail Corporation (IHRC). The Board's May 14, 1996, decision specifically noted that the abandonment process could not be completed as to the segment between I-74.2 and I-95.6 until IHRC's discontinuance of trackage rights was authorized by the U.S. Bankruptcy Court. N&W was directed to inform ITF of the discontinuance of IHRC's trackage rights. The May 14, 1996, decision further provided that "If no trail use condition is sought within 10 days after N&W notifies the trail user of IHRC's discontinuance, then N&W may complete the abandonment process as to that portion of the Line."

In its February 17, 2004, letter to the Board, the N&W concedes that, on January 15, 1998, the Bankruptcy Court entered its order of confirmation of IHRC's Chapter 11 Plan and that such order constituted the approval of the discontinuance of trackage rights involved in this proceeding. Six years elapsed after the Bankruptcy Court's approval of IHRC's discontinuance of trackage rights, with no action being taken to seek a trail use condition for the segment of line between milepost I-74.2 and I-95.6 until the February 2004 filings with the Board. During that time, N&W completed *de facto* abandonment of the railroad line between milepost I-74.2 and milepost I-95.6.

Also, during that six year interval, ITF filed a lawsuit against Hoover in the Miami Superior Court, Peru, Indiana, under Cause No. 52D01-0301-PL-00002. A copy of the complaint filed in the Miami Superior Court on January 3, 2003, is attached hereto as "Exhibit A." Among other things, the complaint alleges that Hoover had trespassed on former railroad right-of-way which had been transferred to ITF. The portion of railroad right-of-way upon which Hoover allegedly trespassed lies between milepost I-74.2 and milepost I-95.6. The complaint requested that Hoover be enjoined from further acts of trespass and also requested that a judgment for damages be entered against Hoover.

On or about July 7, 2003, ITF submitted to Hoover its Plaintiff's Answers to Defendants First Set of Interrogatories to Plaintiff. A true and correct copy of ITF's answers to interrogatories are attached hereto as "Exhibit B." As can be noted, ITF alleges several acts of trespass by Hoover between the summer of 1999 and September 2002. ITF's answer to interrogatory #4 indicates money damages were incurred by ITF as a result of the alleged trespasses and indicated that money damages would be sought against Hoover.

On September 10, 2003, the undersigned attorney for Hoover took the deposition of Richard Vonnegut, the President of ITF. During that deposition, Mr. Vonnegut testified under oath that the Board had previously granted to ITF a Notice of Interim Trail Use for the segment of line between milepost I-74.2 and milepost I-95.6. Mr. Vonnegut testified that he relied in that regard on the Board's decision served May 14, 1996. When counsel for Hoover pointed out to Mr. Vonnegut that the decision upon which he relied expressly stated that the Board was not issuing a NITU for the segment of line between milepost I-74.2 and I-95.6, Mr. Vonnegut was not dissuaded but rather insisted that a NITU had already been issued by the Board for that segment of line. Further, during his deposition, Mr. Vonnegut acknowledged that, without the issuance of a NITU for the segment in question, ITF had no basis for obtaining title to that segment. Without title to that segment, ITF's lawsuit against Hoover is meritless.

On February 13, 2004, ITF sent two letters to the Board requesting the issuance of a NITU for the segment between I-74.2 and I-95.6. On February 18, 2004, ITF sent another letter to the Board reiterating its request for a NITU between I-75.5 and I-95.6. At the time it made its request to the Board, ITF knew full well that any action by the Board with regard to the segment in question could adversely affect the rights of Hoover in connection with the litigation filed by ITF against Hoover in the Miami Superior Court. However, absolutely no notice was provided to Hoover for the relief requested from the Board. The Board's March 10, 2004, decision was made without Hoover having any realistic opportunity to respond to ITF's requests.

ARGUMENT

ITF's Attempts to Adversely Impact the Property Rights of Sam Hoover Without Notice and an Opportunity to be Heard Violates Sam Hoover's Due Process Rights.

As noted above, ITF sought relief from the Board, which would adversely impact Hoover's property rights in litigation filed by ITF, but failed or refused to give Hoover notice of its efforts. Further, the Board's Decision and Notice of Interim Trail Use or Abandonment served May 10, 2004, may have retroactively altered the rights of the parties in connection with the litigation filed by ITF against Hoover in the Miami Superior Court. Specifically, paragraph 3 of the Court's order indicates that the order modifies the decision served May 14, 1996. The actions leading up to and including the Board's Decision and Notice of Interim Trail Use or Abandonment served March 10, 2004, violate all concepts of due process and are therefore void.

In *Mathews v. Eldridge*, 424 US, 319, 348, 96 S.Ct.893, 909 (1976), the Supreme Court held that "the essence of due process" requires that a person subject to loss by governmental action be given notice and an opportunity to respond. To determine the adequacy of governmental procedures in terms of due process requirements requires an analysis of the following factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id at 335, 96 S.Ct. at 903.

In this instance, ITF seeks to penalize Hoover both monetarily and through a deprivation of his property rights through action taken by the Board without notice to Hoover. Thus, the private interest affected is significant.

Without affording Hoover a realistic opportunity to be heard, the risk of an erroneous decision and an improper impact on the rights of Hoover are significant. Further, actual notice to Hoover of the action to be taken would unquestionably provide Hoover significant procedural safeguards in addressing the merits of the matter before to the Board, thereby protecting Hoover's rights.

Finally, the governmental interest in issuing a NITU cannot begin to outweigh Hoover's rights in protecting his property interests. The fiscal and administrative burden of providing Hoover actual notice required insignificant effort.

In short, in the posture of this particular proceeding, Hoover's rights should have been protected through the furnishing to him of actual notice of ITF's effort to affect Hoover's standing and posture in the Miami Superior Court action filed by ITF.

As noted in *Gray Panthers v. Schweiker*, 652 F.2d 146 (D.C.Cir. 1981), "adequate notice lies at the heart of due process." *Id.* at 168. A system which does not provide adequate notice to those affected and a full opportunity to be heard is flawed. *Id.* at 172. Such is the case here.

In *Vail v. Brown*, 841 F.Supp. 909, 912, 913 (D.Minn. 1994), the court stated:

[B]efore a federal agency may take an action which affects a constitutionally-protected interest in life, liberty, or property, "parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." [Citation omitted] Such notice is to be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the

opportunity to present their objections.” [Citations omitted] It is fundamental that the right to notice and an opportunity to be heard ‘must be granted at a meaningful time and in a meaningful manner.’”

Here, ITF requested Interim Trail Use with regard to the northern segment on February 13 and 18, 2004, thereby affecting Hoover’s property rights in the litigation filed by ITF. Without any notice whatsoever to Hoover, the Board granted ITF’s request on March 8, 2004. That decision cannot stand under the principles stated in *Vail v. Brown*.

**ITF’s REQUEST FOR INTERIM
TRAIL USE SHOULD BE DENIED ON THE MERITS**

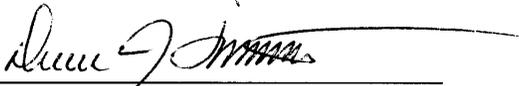
ITF’s request for Interim Trail Use is wholly without merit. By admission of ITF and N&W, the vast majority of the line north of Peru, Indiana, has been removed from interstate commerce and, therefore, from jurisdiction of the Board due to the abandonment of the segment from mileposts I-72.7 to I-74.2. Further, ITF has neglected its responsibilities with regard to a segment south of Peru, Indiana, over which it obtained control and has shown that it is not a fit and proper sponsor. These topics have been fully discussed in filings submitted by Petitioners William C. Friend, Steven Furnivall, and Linda Linda Schanlaub and do not need to be repeated here. Petitioner Hoover hereby incorporates and adopts those arguments as if fully set forth herein.

CONCLUSION

For the above-stated reasons, the Board’s Decision and Notice of Interim Trail Use or Abandonment served March 10, 2004, cannot stand. It should be set aside, and

ITF's requests for interim trail use dated February 13, 2004, and February 18, 2004, should be denied. Petitioner Hoover respectfully requests that the Board take such action.

STARR AUSTEN TRIBBETT MYERS & MILLER

By 

Donald J. Tribbett
201 South Third Street
Logansport, IN 46947
574-722-6676
Attorney I.D. #1513-09

ATTORNEYS FOR PETITIONER
SAM HOOVER

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April, 2004, a true and accurate copy of the above and foregoing was served on the following by depositing the same in the United States Mail with sufficient first class postage affixed.

Richard Vonnegut
President
Indiana Trails Fund
P.O. Box 402
Indianapolis, IN 46206-0402

James R. Paschall
General Attorney
Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, VA 23510-9241

Nels Ackerson
Cecilia Fex
Sommer Barnard Ackerson, PC
1666 K Street
Suite 1010
Washington, DC 20006



Donald J. Tribbett

STATE OF INDIANA)

IN THE MIAMI SUPERIOR COURT

COUNTY OF MIAMI)

FILED

CAUSE NO. 52D01-0301-PL-00002

INDIANA TRAILS FUND, INC.,)
Plaintiff)

JAN 03 2003

VS.

Rudy McCrae

SAM HOOVER AND)
ROBERTA HOOVER,)
Defendants)

Clerk Miami Superior Court

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Indiana Trails Fund, Inc., by its attorney, Jeffrey G. Price, now states for a claim against the Defendants, Sam and Roberta Hoover, that:

I.

1. Plaintiff is the owner of a former railroad right-of-way, which was conveyed to Plaintiff by the Norfolk Southern Railway Company, a Virginia corporation, by deed recorded in the Miami County Recorder's Office March 19, 1999, in Deed Records, Book 196 at pages 981 and following. The real estate more specifically described in said deed is referred to in this complaint as "the trail property".

2. At various times after Plaintiff acquired title to the real estate, Defendant, Sam Hoover, has come upon "the trail property" without the permission and consent of the Plaintiff.

3. Verbal and written demands have been made upon the Defendants, Sam and Roberta Hoover, insisting they not trespass upon "the trail property". Despite such demands, the Defendant, Sam Hoover, continues said trespass and threatens to continue said trespass.

EXHIBIT A

4. In the event and to the extent that Defendant, Roberta Hoover, has participated in said trespasses, she has been joined in this lawsuit to answer as to those acts or omissions. To the extent said Defendant, Roberta Hoover, claims an interest in "the trail property", she has likewise been joined as a party to declare and prove said interest.

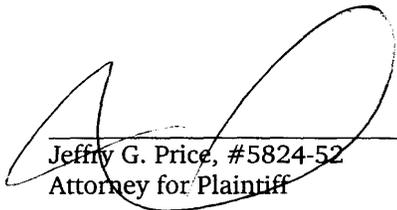
5. Plaintiff verily believes that unless the Court enjoins the Defendants from continuing to trespass upon Plaintiff's property that said trespass will continue without end.

6. Additionally, Plaintiff believes others are also trespassing upon its property and that injunctive relief in this case may discourage or discontinue future trespass upon Plaintiff's property by others.

7. Plaintiff's remedy at law, and by way of nominal damages, is inadequate to properly compensate it for the continued trespass upon its property by Defendants. The public good would also be served by injunctive relief against said future trespass.

WHEREFORE, Plaintiff prays for judgment against the Defendants, finding that one or both of them have trespassed upon Plaintiff's "trail property"; for further order of the Court granting a temporary restraining order barring Defendants from coming upon Plaintiff's real estate until hearing and trial in this case can be held; for further order of the Court granting a permanent injunction against the Defendants barring them from trespassing upon "the trail property" and for all other relief proper in the premises.

I affirm under the pains and penalties that the foregoing is true and accurate to the best of my knowledge and belief.



Jeffrey G. Price, #5824-52
Attorney for Plaintiff

II.

Plaintiff states by way of additional or alternative claim against the Defendants that:

1. The facts and material allegations contained in Section I, above, of this Complaint are hereby incorporated by reference and made a part of the same.

2. Defendant, Sam Hoover, has removed ballast, dirt and other materials from “the trail property” without the consent, notice or approval of the Plaintiff.

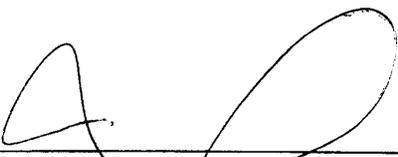
3. In addition to the above, Defendant, Sam Hoover, has planted crops, or attempted to do so, upon Plaintiff’s real estate without the consent or approval of Plaintiff.

4. In addition to the above, Defendant, Sam Hoover, has dug holes in, moved dirt upon, and buried items all upon Plaintiff’s real estate and without Plaintiff’s consent or approval.

5. Many of the actions noted above by the Defendant, Sam Hoover, have come after verbal and written demands have been made by Plaintiff to said Defendant to stop trespass and damage to “the trail property”. Thus, it appears the actions of Sam Hoover are willful, knowing and intentional. Said conduct by the Defendant, Sam Hoover, upon, in and damaging to “the trail property” would appear to be conduct punishable by the award of treble damages, attorney’s fees and such similar extraordinary remedies provided by law.

WHEREFORE, Plaintiff prays for judgment against Sam Hoover in an amount to fully compensate Plaintiff for its damage and loss by reason of said Defendant’s wrongful and intentional conduct; for an award of treble damages and attorney’s fees; and for all other relief proper in the premises.

I affirm under the pains and penalties of perjury that the foregoing is true and accurate to the best of my knowledge and belief.



Jeffrey G. Price, #5824-52
Attorney for Plaintiff

JEFFRY G. PRICE, #5824-52
ATTORNEY AT LAW
15 SOUTH WABASH STREET
PERU, INDIANA 46970
TELEPHONE: (765) 472-3339

STATE OF INDIANA)
) SS:
COUNTY OF MIAMI)

IN THE MIAMI SUPERIOR COURT
CAUSE NO. 52D01-0301-PL-0002

INDIANA TRAILS FUND, INC.,)
)
Plaintiff,)
)
v.)
)
SAM HOOVER AND,)
ROBERTA HOOVER,)
Defendants.)

**PLAINTIFF'S ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES
TO PLAINTIFF**

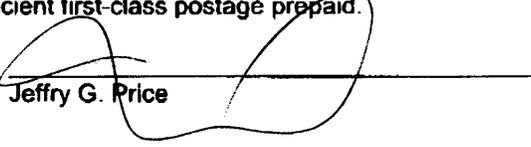
Indiana Trails Fund, Inc., Plaintiff herein, for answers to Defendants' First Set of Interrogatories to Plaintiff, attaches hereto its answers.

I affirm under the penalties for perjury that the foregoing representations are true and correct to the best of my information, knowledge, and belief.


Indiana Trails Fund, Inc., Plaintiff
By: Richard Vonnegut, President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of July, 2003, a true and correct copy of the foregoing was served upon Mr. Donald J. Tribbett, 201 S. Third Street, Logansport, IN 46947, being counsel of record for the Defendants, by placing a copy of the same in the United States Mail, sufficient first-class postage prepaid.


Jeffrey G. Price

JEFFRY G. PRICE, # 5824-52
ATTORNEY AT LAW
15 SOUTH WABASH STREET
PERU, INDIANA 46970
TELEPHONE: (765) 472-3339

EXHIBIT B

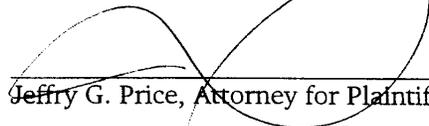
STATE OF INDIANA)
) SS:
COUNTY OF MIAMI)

IN THE MIAMI SUPERIOR COURT
CAUSE NO. 52D01-0301-PL-0002

INDIANA TRAILS FUND, INC.,)
)
 Plaintiff,)
)
 v.)
)
SAM HOOVER AND,)
ROBERTA HOOVER,)
 Defendants.)

CERTIFICATE OF DISCOVERY

The undersigned hereby certifies that Plaintiff's Answers to Defendants' First Set of Interrogatories to Plaintiff and Plaintiff's Responses to Defendants' Request for Production of Documents to Plaintiff have been furnished to Mr. Donald J. Tribbett, STARR AUSTEN TRIBBETT MYERS & MILLER, 201 S. Third Street, Logansport, IN 46970, by placing a copy of the same in the United States Mail, postage prepaid, this 7th day of July, 2003.


Jeffrey G. Price, Attorney for Plaintiff

JEFFRY G. PRICE, #5824-52
ATTORNEY AT LAW
15 SOUTH WABASH STREET
PERU, INDIANA 46970
TELEPHONE: (765) 472-3339

STATE OF INDIANA)
) SS:
COUNTY OF MIAMI)

IN THE MIAMI SUPERIOR COURT
CAUSE NO. 52D01-0301-PL-0002

INDIANA TRAILS FUND, INC.,)
)
 Plaintiff,)
)
 v.)
)
SAM HOOVER AND,)
ROBERTA HOOVER,)
 Defendants.)

**PLAINTIFF'S ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES
TO PLAINTIFF**

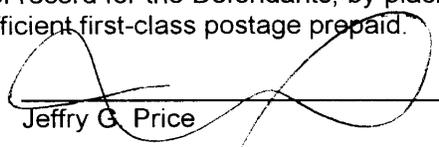
Indiana Trails Fund, Inc., Plaintiff herein, for answers to Defendants' First Set of Interrogatories to Plaintiff, attaches hereto its answers.

I affirm under the penalties for perjury that the foregoing representations are true and correct to the best of my information, knowledge, and belief.

Indiana Trails Fund, Inc., Plaintiff
By: Richard Vonnegut, President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of July, 2003, a true and correct copy of the foregoing was served upon Mr. Donald J. Tribbett, 201 S. Third Street, Logansport, IN 46947, being counsel of record for the Defendants, by placing a copy of the same in the United States Mail, sufficient first-class postage prepaid.



Jeffrey G. Price

JEFFRY G. PRICE, # 5824-52
ATTORNEY AT LAW
15 SOUTH WABASH STREET
PERU, INDIANA 46970
TELEPHONE: (765) 472-3339

INTERROGATORY ANSWERS

INTERROGATORY NO. 1: With regard to each act of trespass that plaintiff contends one or more of the defendants has committed on its property, provide the following information:

- A. The date of the trespass.
- B. A general description of the nature of the trespass (i.e. what did the defendant or defendants do).
- C. The name and address of each individual who witnessed the act of trespass.

ANSWER:

Incident #1. A-B. Prior to the summer of 1999, Mr. Hoover removed ground cover and border plants from the corridor (which helps direct users to stay within the linear pattern of the corridor). C. Mr. Hoover, Mr. Richard Vonnegut, Mr. Ed Doughette, Mr. Merrill Grandy, and Mr. Molden.

Incident #2. A-B. Prior to the summer of 1999, Mr. Hoover disturbed the compactness of the railroad ballast and filled in the transportation corridor. C. Mr. Hoover, Mr. Richard Vonnegut, Mr. Ed Doughette, Mr. Merrill Grandy, and Mr. Molden.

Incident #3. A-B. Prior to the summer of 1999, Mr. Hoover removed, and perhaps stole, the railroad ballast and fill material. C. Mr. Hoover, Mr. Richard Vonnegut, Mr. Ed Doughette, Mr. Merrill Grandy, and Mr. Molden.

Incident #4. A-B. During the summer of 1999, Mr. Hoover grew crops on the transportation land, and in doing so, both appropriated the use of the corridor to himself, and converted the land into his own profit, thereby stealing and profiting from the theft.

C. Mr. Hoover, Mr. Richard Vonnegut, Mr. Ed Doughette, Mr. Merrill Grandy, and Mr. Molden.

Incident #5. A-B. During the summer of 2000, Mr. Hoover grew crops on the transportation land, and in doing so, both appropriated the use of the corridor to himself, and converted the land into his own profit, thereby stealing and profiting from the theft.

C. Mr. Hoover and Mr. Richard Vonnegut.

Incident #6. A-B. During the summer of 2001, Mr. Hoover grew crops on the transportation land, and in doing so, both appropriated the use of the corridor to himself, and converted the land into his own profit, thereby stealing and profiting from the theft.

C. Mr. Hoover and Mr. Richard Vonnegut.

Incident #7. A-B. During the summer of 2002, Mr. Hoover grew crops on the transportation land, and in doing so, both appropriated the use of the corridor to himself, and converted the land into his own profit, thereby stealing and profiting from the theft.

C. Mr. Hoover and Mr. Richard Vonnegut.

Incident #8. A-B. During July and August 2002, Mr. Hoover has removed yield signs from the trail and damaged the signs which he removed. C. Mr. Vonnegut.

Incident #9. A-B. During the fall of 1999 and 2000, Mr. Hoover has dug holes in the NKP transportation corridor, has dumped and buried trash into the holes. C. Mr. Vonnegut.

Incident #10. A-B. During August and September 2002, Mrs. Hoover has willfully approached, verbally assaulted and abused Mr. Vonnegut. C. Mr. Vonnegut.

INTERROGATORY NO. 2: With regard to each act of trespass that Plaintiff contends someone other than one of the Defendants has committed on its property as

alleged in paragraph 6 of Complaint for Injunctive Relief and Damages, provide the following information:

- A. The date of the trespass.
- B. A general description of the nature of the trespass (i.e. what did the trespasser do).
- C. The name and address of each individual who witnessed the act of trespass.
- D. The name and address, if known, of the person(s) who committed the trespass.

ANSWER:

As yet I do not know of trespassers, however, some snowmobilers and/or ATVs have invaded the Kanning farm, and other nearby farms. That they like fields in which to ride, the destroying of corridors and its borders open the field, leading to abuse of the field and of the damaged corridor. If the ATVer were to be injured in the denuded field, such injury could lead to a lawsuit. This suit is to help defend against such abuse.

INTERROGATORY NO. 3: Describe the date of, nature of, and the person(s) involved in each act taken by Plaintiff to comply with the provisions of Indiana Code §§8-4.5-6-1 through 8-4.5-6-7 with regard to the trail property described in the Complaint for Injunctive Relief and Damages.

ANSWER: I.C. 8-4.5-6-1 through 7 do not apply to the Nickel Plate Trail because this law is only to be applied to trails which are funded by the Transportation Corridor Planning Board law. This Board has never been funded, let alone has this Board funded a trail.

In addition, Section 6, which deals with fences, cannot apply as Mr. Hoover damaged and removed three signs, which Mr. Vonnegut placed to help direct trail users. This sabotage clarifies the fact that Mr. Hoover would damage any fence, thereby rendering any attempt to define a border or trail useless.

INTERROGATORY NO. 4: List each element of damages you contend has been caused by one or more Defendant and the amount of such damages. In the event you are unable to state an amount for any element of damages, describe the manner in which you propose to calculate that element of damages.

ANSWER: The area of the corridor will have to be surveyed. I will employ an Indianapolis engineering firm.

The land structure will have to be rebuilt. Railroad ballast and fill material will have to be ordered. This ballast and fill material need to be placed and compacted as reconstructing a rail line is necessary to preserve the terms of railbanking and to maintain the possible physical re-railing of the line. To do this, both the University of Illinois text will be bought, and three railroad truck maintenance supervisors will be engaged or employed to advise on this project.

All these costs plus damages will be estimated and charged to Mr. Hoover.

INTERROGATORY NO. 5: State the date of each verbal or written demand you have made upon one or more Defendant as alleged in paragraph 3 of the Complaint for Injunctive Relief and Damages, the identity of the person making each such demand, the identity of the person to whom each such demand was made, whether each such demand was written or verbal, and what was said in connection with each such demand.

ANSWER: In October 9, 1999, Mr. Richard Vonnegut asked Mr. Hoover not to plow

or disturb the corridor in the future. Upon seeing the trash hole, Mr. Vonnegut also asked Mr. Hoover not to dig or dump trash in the corridor. Mr. Hoover admitted to and explained his point as to his planning the RROW.

In the Fall of 2000, Mr. Vonnegut asked Mr. Hoover not to encroach upon the RROW.

In the Spring of 2002, the Trails Fund attorney, Mary Davidsen, wrote and sent a letter by both regular mail and certified mail to Mr. Hoover instructing him not to farm on the Nickel Plate or to use the corridor, except as any member of the public would.

In August 2002, Mrs. Hoover threatened legal repercussions against Mr. Vonnegut, without ever identifying herself, even after Mr. Vonnegut asked her her name.

In September 2002, Mrs. Hoover stopped her car at County Road 300 North and spoke rudely to Mr. Vonnegut.