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BALL JANIK LLP

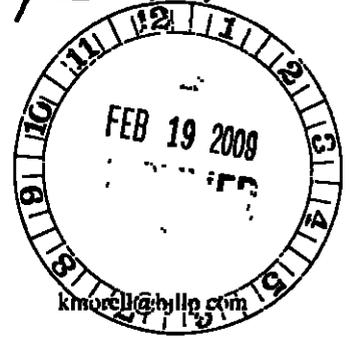
A T T O R N E Y S

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KARL MORELL



February 19, 2009

Hand Delivery

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re. STB Docket No. AB-1020X, East Penn Railroad, LLC – Abandonment
Exemption – In Berks and Montgomery Counties, Pennsylvania

Dear Acting Secretary Quinlan:

Attached for filing are the original and ten (10) copies of the Reply To Petition
For Stay.

If you have any questions, please call me

Sincerely,

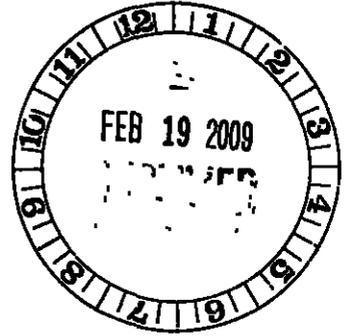
A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

Enclosures

ENTERED
Office of Proceedings
FEB 19 2009
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB DOCKET NO. AB-1020X

EAST PENN RAILROAD, LLC
--ABANDONMENT EXEMPTION--
IN BERKS AND MONTGOMERY COUNTIES, PA

REPLY TO PETITION FOR STAY

Karl Morell
Of Counsel
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(202) 638-3307

Attorney for.
East Penn Railroad, LLC

Dated: February 19, 2009

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1020X

EAST PENN RAILROAD, LLC
--ABANDONMENT EXEMPTION--
IN BERKS AND MONTGOMERY COUNTIES, PA

REPLY TO PETITION FOR STAY

East Penn Railroad, LLC ("ESPN") hereby replies in opposition to the Petition For Stay Of Decision Served January 28, 2009 ("Petition") filed by Berks County ("County"), on February 13, 2009.

By decision served on November 18, 2008 ("November Decision"), in this proceeding, the Surface Transportation Board ("Board") exempted, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, the abandonment of ESPN's rail line located between milepost 0.0, at Pottstown, and milepost 8.6, at Boyertown (the "Line"). The exemption was scheduled to become effective on December 18, 2008, unless an offer of financial assistance ("OFA") was filed by November 28, 2008. The County filed its OFA on November 26, 2008, as clarified on November 28, 2008.

By decision served December 2, 2008, the Board postponed the effective date of the exemption to permit the OFA process to proceed ("December Decision"). By decision served January 28, 2009, the Board set the purchase price for the Line at \$2,162,018, and gave the County until February 9, 2009, to withdraw its offer ("January Decision"). On February 3, 2009, the County sought judicial review of the January Decision. By letter filed February 9, 2008, the

County refused to accept the terms and conditions set by the Board. On February 13, 2009, the Board vacated the December Decision ("February Decision")

The County seeks to have the Board stay the January Decision. But the January Decision became effective on the date of its service. The Board cannot stay the effectiveness of a decision that is already effective. The County relies on the provisions of 49 C.F.R. § 1152.25(e)(7)(iii), in support of its stay request. Those provisions, however, govern stay requests of the effective date of the abandonment authorization decision and not the decision setting the OFA purchase price and transfer terms. Also, under Section 1152.25(e)(7)(iii), a stay request must be filed no later than 15 days prior to the effective date of the abandonment authorization. Pursuant to the February Decision, the abandonment exemption in this proceeding became effective on February 13, 2009, the day the Petition was filed.

Pursuant to 49 U.S.C. § 1115.5, when a decision becomes effective on less than 15 days' notice, a stay pending judicial review must be filed **prior** to the institution of court action and as close to the service date as practicable. The County filed its Petition 10 days **after** instituting court action and **18 days** after the service date of the January Decision. In other words, the County's filing sequence is backwards and the filing of the Petition is woefully late. The County states that it filed the Petition "at this time and not earlier so as not to interfere with the negotiating process." Petition at 6. The County's euphemism for having late-filed the Petition rings hollow since the negotiating process didn't prevent the County from seeking judicial review. Also, a stay petition filed under Section 1115.5 may not exceed 10 pages. Section 1115.5(c). Thus, the County's Petition is also over-verbose.¹

¹ Should the Board consider the merits of the Petition, ESPN hereby requests that all but the first 10 pages be stricken from the record

The Petition should be summarily rejected on one of two grounds. First, the Petition seeks relief (staying the effectiveness of a decision that is already effective) that cannot be granted. Second, even if the January Decision were not already effective, the Petition is woefully late and was filed after the County filed for judicial review.

The Petition is also puzzling. ESPN simply cannot understand what benefit or utility the County would gain by having the January Decision stayed. The January Decision did not authorize the abandonment of the Line, it simply set the purchase price of the Line under the OFA process. The County has rejected the price set by the Board and the Board, in turn, has terminated the OFA process in this proceeding. The County fails to explain what purpose is to be served by perpetuating a purchase price which the County refuses to accept.

The County claims that it will be irreparably harmed if the Line is salvaged during the appeal process. Petition at 20-21. Staying the effective date of the January Decision, even if that were still possible, would not preclude ESPN from salvaging the Line. To the extent the County is seeking to prevent ESPN from salvaging the Line, it has sought a stay of the wrong decision. Moreover, such relief would be contrary to the governing statute and the Board's regulations. Pursuant to 49 U.S.C. § 10904(f)(2), whenever an offeror refuses to accept the price and terms set by the Board, "the abandonment or discontinuance may be carried out **immediately....**" Emphasis supplied. See also 49 C.F.R. § 1152.27(h)(7)²; *Buffalo Ridge R.R., Inc. – Aban. Bet. Manley, MN and Brandon, SD*, 9 I.C.C.2d 778 (1993). Consequently, to the extent the County seeks to preclude ESPN from consummating the abandonment of the Line, the request is in direct contravention of the governing statute and the Board's regulations.

² In adopting the OFA rules, the Board's predecessor explained that OFA decisions were intended by Congress to be final. Thus, granting a stay of such decisions would be inconsistent with the statutory scheme. See *Abandonment of R. Lines & Discontinuance of Serv.*, 365 I.C.C. 249, 261 (1981)

In addition to seeking relief that cannot be granted and being untimely, the Petition lacks merit. The standards governing disposition of a request for stay are: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (“*Petroleum Jobbers*”). It is the movant’s obligation to justify the exercise of such an extraordinary remedy, *Cuomo v. United States Nuclear Regulatory Comm.*, 772 F.2d 972, 978 (D.C. Cir. 1985), and the movant carries the burden of persuasion on each of the four elements required for the extraordinary relief. *Canal Authority of Fla. V Callaway*, 489 F.2d 567, 573 (5th Cir. 1974).

As is demonstrated below, the County has failed to meet the stay criteria.

The County Is Unlikely To Prevail On The Merits

The County claims that the January Decision contains material error in two major respects. It is not the Board’s January Decision that is lacking, but the County’s evidence in the OFA proceeding. Also, as with other filings made by the County in this proceeding, the Petition is riddled with false and misleading statements.

The County claims that the Board erred by according too much weight to ESPN’s witness (Mr. Paul Catania) who is not an attorney, whereas the County’s witness, Mr. Edwin Stock, is an attorney. The County’s logic is faulty and its representations regarding Mr. Stock are false. Contrary to the County’s implications, one does not have to be an attorney to be an expert in

railroad real estate. Conversely, simply because one is an attorney does not make that individual an expert in railroad real estate.

Mr. Stock is not, as the County claims, a “real estate attorney” much less an expert in railroad real estate matters. Petition at 7. According to his firm’s web site, Mr. Stock’s practice is concentrated on litigation, securities litigation, health care and various aspects of municipal law. Mr. Stock fails to identify a single real estate matter he has worked on much less a matter involving railroad deeds. Mr. Stock was chosen by the County not for his expertise in real estate but because he is the Solicitor for the County’s Office of Assessment Appeal. Mr. Catania, on the other hand, has nearly 30 years of experience dealing with railroad property, in general, and property of the former Reading Company, specifically. The Board should have accorded no weight to Mr. Stock’s testimony since he lacks real estate experience and is on the County payroll.³

In the Petition, the County erroneously claims that all “release” conveyances are less than fee. Not even their own purported expert rendered such a patently false opinion. As Mr. Catania explained: it is not the title of the document that is determinative of the nature of the ownership, rather the contents of the document. Also, as ESPN demonstrated in its December 31, 2008 filing, the releases reviewed by the courts in the cases cited by the County are significantly different than ESPN’s releases.

The County also falsely claims that ESPN “produced no evidence that its Deeded parcels exceed 12 acres. Petition at 7, note 6. Attachment 5 to the Verified Statement of Mr. Sauer lists all of the Deeds and the acreage of each Deeded parcel. As this Attachment demonstrates, there

³ The County mischaracterizes Mr. Catania’s testimony by asserting that he claimed a lack of familiarity with the releases. His testimony was that he had not seen this level of non-reversionary language in other releases he had reviewed.

are 28.81 acres of Deeded property on the Line. In fact, the Deeds submitted by the County in its OFA filings contain 21.37 acres and not 12 acres as the County claims. Consequently, the County's own evidence demonstrates that the value of the Deeded properties is \$525,783, or about two and one-half times the value claimed by the County.⁴ Moreover, as pointed out in ESPN's January 7, 2009 Motion to Reject, ESPN's ability fully to prepare its reply was prejudiced by the County's failure strictly to comply with the Board's rules governing service. ESPN was unable to locate, copy and file with the Board Briefs of Title associated with many of the Releases which the County claims are less than fee. As an example, attached as Exhibit 4 to the Motion to Reject is the "Brief of Title" associated with the Release from Henry and Jacob Grabel.⁵ If the County had properly served ESPN, ESPN would have had adequate time to introduce the Briefs of Title which conclusively demonstrate that the releases conveyed fee title. Another copy of the Brief of Title is attached as Exhibit 1.

The Petition also grossly distorts ESPN's evidence as to the consideration paid for the releases. For example, the County claims that the consideration paid for the Yorgey property was "significantly larger than any other." Petition at 18. The price paid for the Yorgey property was not the highest paid value. The highest paid price was \$10,000 for the Grabel property. Also, the price paid for the Yorgey property was not \$1,300, as claimed by the County, but \$1,800, \$500 of which was in bonds. The County concedes that if significant consideration was

⁴ Mr. Stock conceded that all Deeded property was held in fee and the County's appraiser claimed that the average value of the Deeded parcels was \$18,250 per acre. This gross error alone should have been enough for the Board to find that the County had failed to meet their burden of proof.

⁵ The consideration for this Release was \$10,000 for 3.442 acres, or \$2,905.29 per acre. It appears from the Brief of Title that the Grabels had purchased this property (from a widow), which included a flour and grist mill, four dwellings, and a plantation or tract of land of 275 acres for three separate mortgages totaling \$33,400. Less than a year later, the Grabels sold a little over 1 percent of the property to the Colebrookdale Railroad for about 30 percent of their purchase price. It is inconceivable that the interest acquired by the railroad was simply an easement as alleged by the County.

paid for the release parcels that “would weigh in favor of [ESPN’s] contention that fee ownership was conveyed.” Petition at 18. Mr. Sauer demonstrated that the average price paid for a parcel conveyed by release was \$518.15 per acre whereas the average price paid for a parcel conveyed by Deed was \$596 per acre. Since the County concedes that the Deed parcels are held in fee and since Mr. Sauer has demonstrated that the amount paid for the Deed parcels is approximately the same as for the release parcels, the release parcels must also have conveyed fee title. Even the County would not argue that a rationale person would pay the same amount for an easement over a parcel as he or she would pay for fee title to the parcel.

The County erroneously alleges that ESPN included “charter” parcels in its appraisal. The parcels included in ESPN’s appraisal are listed in the attachments to Mr. Sauer’s Verified Statement. If the County had taken the time to look, it would have realized that not one parcel of charter property is included in the ESPN appraisal.

The County further argues that the indemnification provision constitutes material error. But that provision was imposed by the Board as a benefit, and not detriment, to the County. The burden of proof standard in an OFA proceeding requires that whenever there is disagreement, the rail carrier’s estimate prevails unless the offeror provides more reliable and verifiable documentation for its valuations. Unless the offeror provides specific evidence supporting its valuations and contradicting the carrier’s valuations, the carrier’s evidence is accepted by the Board. See Docket No. AB-556 (Sub-No. 2X), *Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH, and Darlington, PA, In Mahoning and Columiana Counties, OH, and Beaver County, PA* (not printed), served January 7, 2000, *aff’d sub nom., R.R. Ventures, Inc. v STB*, 299 F.3rd 523 (6th Cir. 2002). Because the County’s evidence was not superior to ESPN’s evidence, the Board had no choice but to accept ESPN’s real estate

valuations. Technically, the Board should have stopped at that point. Instead, the Board imposed the indemnification provision as a benefit to the County. It is unlikely that the indemnification issue is even appealable by the County since the County cannot demonstrate that it is a party aggrieved as to that issue.

In summary, the County has failed miserably to demonstrate that it will prevail on the merits. The Petition, at best, is a fanciful distortion of the record evidence.

Denial of the Stay Will Not Cause the County Irreparable Harm.

As previously noted, the County has not, and cannot, demonstrate that it will suffer irreparable harm absent a stay of the January Decision. The January Decision simply established the purchase price of the Line for purposes of the OFA process. Staying that decision will not, as the County alleges, prevent ESPN from salvaging the Line. The harm the County alleges is not associated with the January Decision. In fact, the alleged harm is non-existent. The County claims that loss of the Line would produce “increased highway congestion, reduced highway safety, an increase in the unemployment rate among blue collar workers....” Petition at 20. These contentions, of course, are straight out of fantasyland: One cannot clog highways with traffic diverted from a rail line when there is no traffic on that line.

In any event, the argument advanced by the County has been consistently rejected by the Board and its predecessor. *See e.g.*, Docket No. AB-286 (Sub-No. 2X), *The New York, Susquehanna and Western Railway Corporation – Abandonment Exemption – Portion of the Edgewater Branch in Bergen County, NJ* (not printed), decided July 17, 1991; STB Docket No AB-559 (Sub-No. 1X), *Gauley River Railroad, LLC – Abandonment and Discontinuance of Service – Webster and Nicholas Counties, WV* (not printed), served July 21, 2000.

Harm to Other Parties.

The County, of course, is correct that staying the January Decision will not harm ESPN, since ESPN would still be free to salvage the Line. Precluding ESPN from salvaging the Line, however, would significantly harm ESPN. The Board has determined that the net liquidation value of the Line is \$2,162,018. Consequently, ESPN's foregone opportunity costs would be \$323,879 a year.

A Stay is Not in the Public Interest.

Granting a stay of the January Decision cannot possibly be in the public interest since it would have no benefit or utility to anyone.

The County once again makes the argument about congested highways. The County also urges the Board "not to lose sight of the fact that this country has both a well documented shortage of fossil fuel and a global warming problem." Petition at 22. The County fails to explain how staying the January Decision would be of any assistance in solving these matters. The County is also at a loss to explain how keeping in tact a dormant rail line would reduce highway congestion, reduce fuel consumption and prevent global warming.

The County submits the verified statement of Drug Plastic and Glass Co. ("Drug Plastic") and Martin Stone Quarries, Inc. ("Martin") in support of the Petition. In the November Decision, the Board correctly found that the Line is unprofitable with the traffic volumes shipped by Drug Plastic and another former customer. Also, the Martin verified statement is the same as that previously filed by the County and considered by the Board in the November Decision. Martin is not located on the Line and the County has continually failed to explain how Martin's aggregate traffic would magically appear in rail cars on the Line.

Drug Plastic erroneously claims that it was forced to make alternative arrangements due to the service embargo imposed by ESPN and the County falsely contends that ESPN “materially misrepresented to the Board’s SEA that Drug Plastic informed ESPN that it was no longer interested in using the *Colebrookdale* Line.” Petition at 23-24. Attached as Exhibit 2 are an e-mail sent by Mr. Sauer to Anil Nath, an employee of ChevronPhillip, who oversees the shipments to Drug Plastic, and Warren Wolf, an employee of Drug Plastic; and a return e-mail from Mr. Nath to Mr. Sauer. As these e-mails demonstrate, on September 4, 2008, ESPN offered to resume service to Drug Plastic. ChevronPhillips, which routes the Drug Plastic shipments, notified ESPN that they had decided to route the traffic to another location.⁶

Conclusion

ESPN respectfully urges the Board to reject the Petition as either late-filed or for requesting the Board to take an action that it can no longer take. Alternatively, the Board should deny the requested relief on grounds that the Petition falls woefully short of meeting the requirements for a stay.

Respectfully submitted,



Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Dated: February 19, 2009

⁶ The County also falsely claims that ESPN initiated the abandonment in lieu of repairing the bridge. As the County well knows, the abandonment process was started well before the bridge was damaged. For example, the Environmental and Historic Reports in this proceeding were filed with the Board on June 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Response to Protest has been served on Counsel for Berks County, PA, by hand delivery this 19th day of February 2009.


Karl Morell

Colbrookdale RR.

Dept of Silk

H. H. J. N. Sabel.



1.75

by bearing to said corner N 15° 4' East 92.5 ft
Station 23 + 62 shown by a 13" corner set 111 ft
to Station 23 + 63 on line of land of James Lee
Estate. The two pieces containing large trees
3.45 of an acre

Brief of Will

To A Merchant (Shannon) and Sicut Hill, Old Hill
four dwelling houses, Cooper Shop & Station
or track of Planis containing Two Hundred & Sixty
five acres more or less situated in the Townships of
Patterson in the County of Montgomery.
Bounded by the River Schuylkill lands of James
Dues, James M. Massinger and James Riddleman
in the Borough of Patterson.

Will and Codicil
of Daniel Hittner

Will dated April 28. 1834

Codicil dated April 17. 1834

Proved before the Register of Montgomery County
March 11. 1841. Recorded in Will Book 4. p. 131

The will devises all the residue of his property
real and personal (after the payment of debts) to his
four children, Daniel Hittner, Henry Hittner,
Margaret Hittner and Catharine Hittner in
equal shares of one undivided fourth part thereof.

The Codicil revokes the legacy or devise given
as above to his daughter Catharine Hittner and
she thereof devises to her during the term of her
natural life the legal interest of the sum of
Two Thousand Dollars which sum he directs to be
or secured in his marriage Will and trust

of land in (Patterson Journal) in case it is not
 sold in his life time: the interest to pay also
 annually by the person or persons holding the
 real Estate aforesaid, to her own separate use
 & orders & direct that the said interest
 on the said sum of \$10,000 shall as the same
 comes due be paid only to his said daughter
 Catharine in or to her heirs as aforesaid
 time to time by writing under her hand appointed
 to receive the same, to the end & that the same
 may be for her only use & separate use &
 not be subject to the contracts, debts or engagements
 of her husband: & that her receipts in and
 her name, & that which stands in her name shall
 be the only effectual discharge for the same
 and upon the death of his said daughter
 Catharine, he orders & directs that the said
 principal sum of \$10,000 be paid to her children
 then living & the lawful heirs of each of them
 as shall be determined in equal parts & in
 the shall (not have any children or shall
 issue then the same to be paid to his other
 children in his will named in equal parts
 and all the rest and residue of his estate he
 gives to his other children, to wit, to
 Henry & Margaret in equal shares in

Daniel Pitters wife
 Henry Pitters
 To
 Margaret Green

Acts of P.V.
 dated June 5, 1841
 Recorded in 1609 p.
 10th January 1841

Among other recitals the said deed contains the following recitals of the conveyance to the said Daniel Hittor (the testator aforesaid) by virtue of which he became seized of the property described in the foregoing recitals as his (the said Daniel Hittor's) tract of land in Pottsgrove Township.

Thomas Mathew Pearce & Mary his wife by deed dated January 30 (13) 1814 granted unto Daniel Hittor in fee a certain tract or parcel of land in Pottsgrove Township being the residue of a tract of five hundred & fifty four acres granted by James's Potts unto Thomas Potts by deed dated October 21 1763 after deduction therefrom two tracts therein mentioned viz: the first being returned to be one equal half part thereof recorded by Thomas Potts to Daniel Potts & the other being a quiet mill, saw mill & about 24 acres of land which said Mathew Pearce & wife by deed dated January 2 1809 conveyed to Jesse Jones & Rebecca Jones & said deed to Jesse Jones & Rebecca Jones recorded in Deed Book No 29 p 395 & by the same indenture the said Mathew Pearce & wife conveyed to the said Daniel Hittor in fee other land therein described & said indenture being recorded in Deed Book No 35 p 223 & whereas the said Jesse Jones & Rebecca his wife & William Jones Jr by indenture dated the 5th day of April 1813 granted unto said Daniel Hittor in fee all that the said quiet mill, saw mill, & tract of 24 acres of land with the buildings appertaining & restrictions as by said Deed recorded in Deed Book No 35 p 229 &c.

By force and virtue of which said two conveyances

unto Daniel Nitner; he she said Daniel Nitner
became seized in his demises as of fee of certain
certain Manseion & an with Street or Merchant
Mill and other houses and buildings and a tract of
land & extent id to contain about 288 ac. viz. viz.
Part of some Township, and being as then of record in
March 2. 1841. leaving a will and Codicil as afore
said

This deed then proceeds to recite the term of
an agreement of partition of the real estate of
Daniel Nitner Senior among his three children
Daniel, Henry and Margaret to whom the same
was devised. And his arrangements the
tract of 288 acres above mentioned was all
to Margaret. Some time Margaret Nitner and
afforded at the sum of \$32,000

For all the above undivided & kids parts (of Daniel
and Henry Nitner) of and in all that the residue
of Street & Merchant Mill and other houses and
buildings and tract of lands containing by esti-
mation about 288 acres.

Subject to the payment of the said sum of \$2000
and its interest mentioned in the will of Daniel
Nitner Senior in favor of Catharine O. Nitner
(and also subject to the payment of \$2000
to Henry Nitner according to the agreement for
the partition aforesaid particularly recited
in this deed.

Henry H. Jones and Margaret } Deed
his wife } Dated Jan 17, 1841
To } Recorded in Book
Dr William Corson wife } No 59 p. 115. Jan 17 1841

For the messuage Mills and Tract of land con-
taining by estimation about 288 acres
Being the same premises released to Margaret
under the foregoing deed.

Subject to the payment of \$10,000 and its interest
under the will of David Hittner Esq.
and also subject to the payment of \$2000 in
discharge of a bond and Mortgage executed to
Henry Hittner by the said Henry H. Jones and wife
arising out of the division of the real estate
of David Hittner Esq. deceased.

Dr. William Corson } Deed. Dated Jan 17, 1841
To } Recorded in same book
Henry H. Jones } as above p 48 Jan 17, 1841

For the same premises conveyed by the fore-
going deed
and under and subject as above made
subject.

Philip Cohen, Sheriff } Recd. date Oct 27
 To } 1851
 John Ricketts in fee } Entered in Sheriff's Book
 No. 469, 470 & 471

For inter alia all the estate, right title and interest
 of Henry St. Louis of Co. in all that certain
 messuage, tract of mill and four dwelling houses
 Cooper Shop and plantation or tract of land in
 Pottersville Township containing about 275 a.c. or
 more or less.
 Being the same premises conveyed by the
 foregoing deed

Michael C. Boyer, Sheriff } Recd. date
 To } dated May 19 1853
 Joseph Barnett, Alexander } Entered in Sheriff's
 Hebit and Edmund } Deed Book No 6
 Garnetson in fee } pag 30

Consideration \$1250.
 For inter alia all that messuage, tract of mill and
 four dwelling houses Cooper Shop and
 plantation or tract of land containing 275
 acres more or less in Pottersville Township
 aforesaid.

Joseph Barnett, Edmund } Recd. date July 9 1853
 Garnetson Alexander Hebit } (Re. d. d. d. Book
 To } No 89 & 112 Aug. 4. 1853
 James Lynd in fee } Consideration \$2000

For the same property conveyed by the foregoing
deed from Sheriff Boyer

James Lynd & wife } deed dated July 13 1853
 } Rec. in A 89 p 114
 } Aug. 4 - 1853
John J. Maxwell }
 } Consideration 19,000

For the same premises conveyed by the foregoing
deed

John Richter & wife } deed dated Nov. 4. 1853
 } Rec. in A 89 p 114
John J. Maxwell }
 } Aug 6 1854 June 21. 1857
 } Consideration 14,000

For the same premises conveyed by the foregoing
deed

Subject to the charge of \$10,000 (made by
the will of) Daniel Hines Senior

John J. Maxwell & wife } deed dated Nov 16 1853
 } Rec. in deed Book
 } to 92 p 614
Franklin Baugh in fee }
 } June 21. 1857.
 } Consideration 2000

For the same premises described in the foregoing deed -

Being the same premises which John Righter Senior & Elizabeth his wife by their Indenture dated Nov. 4. 1853 (before mentioned) granted unto the said John T. Hotwell in fee and also the same premises which James Lynd and wife by their Indenture dated the 13 day of July 1853 granted and conveyed unto the said John T. Hotwell in fee.

Franklin Baugh & wife } Deed dated June 14 1854
To } Recorded in Deed Book
William Davis in fee. } No 92 - 6134 - June 21 - 1854
Consideration \$2000

For all that certain Merchant Mooring and Grist Mill and Mill Town dwelling Houses Cooper Shop and plantation or tract of land containing 275 acres more or less situated in Pottersville Township, bounded by the River Ochlockonee, lands of James M. James M. McQueen & James Rittenhouse and the Borough of Pottersville.

Being the main part and tract of land conveyed by the foregoing deed.

1864
May 1

Last will and testament of William Davis decd.
I give devise and bequeath to my dear wife Eliza B. Davis her heirs & assigns forever all my property, or estate, Real, Personal & mixed of what nature or kind so ever, wheresoever she shall may be at the time of my death and appointed his said wife Eliza B. Davis sole executrix of said Will &c. Testament.
Proved January 5. 1867. Registered. Will's Book 11. Page 51.

1868
May 1

Deed Eliza B. Davis to Henry H. Gable & Jacob H. Gable sirs for the before mentioned premises consisting of Merchant, Flouring & Sift Mill, Four dwelling houses & Plantation or tract of land containing 275 acres.
ack. same day. Proved May 21 1868 in 13. No. 159. Page 19. - due to payment of legacy of \$10.00 which was discharged by release - see Miscellaneous Book 20 pages 154 - 171 + 501.

William Davis	Jan 1 1864	Jan 6 1867
Eliza B. Davis	Jan 1 1867	May 22 1868
Henry H. Gable & } Jacob H. Gable }		1 April 1868

C. Hyeckoff

Recorder

Please certify all unsatisfied Mortgages of Record in your office on or against the tract of ground hereinafter described given or executed by

William Davis June 1. 1854. Jan 6 1867

Eliza B Davis June 1. 1867 May 12 1868

Henry H. Gable }
Jacob H. Gable } 1 April 1868. Date of Search
Montgomery County, S.D.



I, Christopher Hyeckoff Recorder of Deeds in and for said County do hereby certify that I have searched the General Index to Mortgages in the Recorder Office at Pierre in and for said County and have been unable to find any other than the foregoing unsatisfied Mortgages therein contained on the premises as described in the foregoing Brief of Title made or given by either or any one of the above named. For 14 persons within the periods of time therein specified.

Mortgage

Henry H. Gable et al }
vs }
Eliza B Davis }
lvs }
Created May 9, 1868 Recorded May 12, 1868 in Mortgage Book No 64 page 52 to Twenty two thousand Dollars \$22,000.

Mortgage.
Henry H. Gabel, et al } Dated May 9, 1868 Recorded May
Jo } 12, 1868, in Mortgage Book No. 64.
Eliza B Davis } page 542 for Six thousand
Dollars ----- \$6000.00

Mortgage
Henry H. Gabel, et al } Dated May 9, 1868. Recorded May
Jo } 12, 1868, in Mortgage Book No. 64
Eliza B Davis } page 552 for Five thousand four
hundred Dollars ----- \$5400.00

In testimony whereof I have hereunto set my hand
and seal of Office this Second day of March One
thousand eight hundred and sixty nine (1869)

Oliver Hoff
Recorder

—Original Message—

From: Nath, Anil K [mailto:NATHAK@cpchem.com]
Sent: Thursday, September 04, 2008 11:12 AM
To: asauer@EASTPENRR.com
Cc: Baker, Bradley K; Kaisand, Robert J; Smith, Brian L
Subject: RE: Drug Plastic Cars

AI,

Thanks for the update on the status of the empties at Boyertown, PA. At this time, CPC will ship railcars to another location that we selected and that facility will be the primary destination for shipments to Drug Plastics and other customers nearby. Our team evaluated all the options including your facility at Pennsburg and the facility we selected met our current requirements. If anything changes, we certainly contact you in the future.

If you have additional questions, please let me know or Brad.

Anil

Anil Nath
Commercial Transportation
Chevron Phillips Chemical Company LP
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The Woodlands, Texas 77380
832.813.4253
832.813.4955 (fax)
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nathak@cpchem.com

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<http://www.cpchem.com/forms/disclaimer1.asp>

—Original Message—

From: asauer@EASTPENRR.com [mailto:asauer@EASTPENRR.com]

Sent: Thursday, September 04, 2008 9:55 AM

To: Nath, Anil K; Warren Wolf; Al Sauer

Subject: Drug Plastic Cars

We have had a preliminary inspection of the bridge damage at Pottstown.

We have determined that we can move small volumes of cars (2 to 3 at a time max). We have begun to move the empties off line, and we will be modifying the embargo on loads to reflect that we can move cars on a permit basis.

If you would like to resume shipments to Boyertown, we can handle this on a permit basis. If this is something that you would like to do, please let us know ASAP. If not, we may need to move locomotive elsewhere, and we will not be able to bring it back.

Thanks

Al

Sent via BlackBerry by AT&T