

BARNES & THORNBURG

February 9, 2006

215779

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



Sub 2X

RE: STB Docket No. AB-556, Railroad Ventures, Inc.--Abandonment
Between Youngstown, OH and Darlington, PA in Mahoning and
Columbiana Counties, OH and Beaver County, PA.

Dear Secretary Williams:

Enclosed here with are the original and ten copies of the *Reply to Response of Railroad Ventures, Inc to the CCPA/CCPR Claim for Reimbursement* filed on behalf of the Columbiana County Port Authority ("CCPA"). An additional copy is enclosed with the request that it be date-stamped and returned to me.

Thank you for your consideration in this matter.

Very truly yours,

Richard H. Streeter
Barnes & Thornburg LLP
Counsel for Columbiana County Port
Authority and Central Columbiana &
Pennsylvania Railroad

RHS:rs

Enclosure

cc: All parties of record

FILED
Office of Proceedings

215779

Before the
SURFACE TRANSPORTATION BOARD



Docket No. AB-556 (Sub No. 2X)

RAILROAD VENTURES, INC.-ABANDONMENT EXEMPTION
BETWEEN YOUNGSTOWN, OHIO AND DARLINGTON, PA
IN MAHONING AND COLUMBIANA COUNTIES, OHIO
AND BEAVER COUNTY, PA

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REPLY TO RESPONSE OF RAILROAD VENTURES, INC. TO THE
CCPA/CCPR CLAIM FOR REIMBURSEMENT

Comes now Columbiana County Port Authority ("CCPA") and files its Reply to the *Response of Railroad Ventures, Inc. to the CCPA/CCPR Claim for Reimbursement in the Amount of \$149,872.*¹ It is CCPA's position that RVI, as a matter of law, is not entitled to any amount of refunds from the escrow account.

On June 20, 2001 CCPA requested the Board to appoint the Ohio Rail Development Commission as an appropriate replacement for James Davis as escrow agent in view of RVI's prior insistence that ORDC oversee repair work and give written assent to any reimbursements from the escrow fund.¹ In that pleading CCPA reaffirmed that repair work was going forward in accordance with the comprehensive procedures established by ORDC and that at least one project had been approved for payment. However, CCPA emphasized that it could not receive reimbursement intended by the Board pending approval of ORDC (or some other entity) as escrow agent. In addition, CCPA urged the Board to reaffirm that the \$375,000 escrow fund is meant to ensure that CCPA (and taxpayers) "will not have to pay extra to undo what RVI has improperly done..."²

¹ It should be noted that the claim asserted by CCPA is well in excess of \$375,000, which was the amount that was set aside in the escrow account in accordance with the orders of the Board.

In response the Board clarified that “[c]ontrary to RVI’s allegations, expenditures necessitated by RVI’s disregard for the common carrier obligation cannot be considered as capital expenditures, but rather as necessary expenses to restore the line to service and should be covered from the escrowed funds”.³

The Board then declined to appoint ORDC as substitute escrow agent and establish procedures proposed by CCPA. Instead, it concluded that “the best way to ensure that RVI does not interfere further with the orderly administration of (the escrow) funds and the accomplishment of our original objectives in setting up the funds is to allow CCPA to manage the funds directly.”⁴

Specifically, in its *November 2001* Decision, the STB previously ordered that:

6. CCPA shall establish a separate escrow account with the proceeds transferred to it pursuant to paragraph 5. CCPA may withdraw from the escrow account such funds as are necessary to pay for repairs of this rail line at road crossings and the restoration of signaling equipment that occurred as a result of RVI’s failure to keep the line of railroad operational, and shall keep account of all funds spent.

The Board also ordered that:

8. CCPA shall be held harmless for any funds spent from the escrow account for repairs to its line that were the result of RVI’s failure to keep the line operational during its ownership of the line, except for any fraudulent expenditures.

Based on the Board’s condition that CCPA “*shall be held harmless*” (emphasis added), CCPA agreed to establish the escrow account and to withdraw funds as were necessary to pay for repairs. As required by the Board’s Order, CCPA kept account of all funds.

Although no fraud has been alleged, much less demonstrated, and even though all funds were disbursed to pay for repairs made as necessary to restore service to the line of railroad, the Board has now ordered that CCPA “shall pay \$58,879 to RVI, together with interest ... as of

January 14, 2005.”² Such payment would irreparably harm CCPA and be contrary to the public interest while unjustly enriching RVI for its “several actions that frustrated the release of funds.” *RVI v. STB*, No. 01-4262, slip op. at 3 (6th Cir. filed June 4, 2003). Therefore, CCPA renews its repeated objections to the Board’s retroactive and illegal modification of its prior orders. Such after-the-fact modification, which was made without prior notice to CCPA, has deprived CCPA of due process.

In response to the particulars of RVI’s submission, CCPA notes that RVI’s attack is, in effect, a collateral attack on the decision of the Ohio Rail Development Commission (“ORDC”), which approved payment of the funds upon finding that the repairs in question were proper and that the request for payment by ORDC was properly documented. Given ORDC’s prior approval, Wehner’s attack must be rejected. Simply stated, Wehner is not competent to reverse the considered determination of that Board. Also, this Board should not second guess ORDC’s determination.

Last, as previously noted, the Board’s November 2001 decision, unequivocally held RVI responsible for the cost of restoration and repairing of signaling equipment. As of this date, the Board has not seen fit to require RVI to pay for the new signal systems that were required as a direct result of RVI’s failure to maintain them. The Board’s attention is invited to the Verified Statement of Timothy K. Robbins, dated January 3, 2003, in which he testified as follows (V.S. Timothy K. Robbins at para 8):

When we finally took possession of the line in late January 2001, we discovered that RVI had allowed the line to deteriorate further than we had anticipated. This is most easily demonstrated by reference to the restoration of signaling equipment, which is specifically covered by all of the Board’s Decisions related to the use of escrowed funds. As the Board is aware, signaling

² CCPA intends to seek judicial review of the portion of the Board’s decision that requires it to pay RVI any sum.

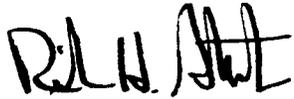
equipment is subject to FRA regulations published at 49 CFR Part 234. In particular, § 234.247(b) imposes the requirement that when an grade crossing warning signal is temporarily taken out of service, it must be fully inspected and “all required tests must be successfully completed before railroad operations over the grade crossing resume.” In addition, § 234.247(c) states that any “electronic device, relay, or other electromagnetic device that fails to meet the requirements of tests required by this part shall be removed from service and shall not be restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.” As Mr. Gane will describe in detail, because RVI had turned off the power to the signaling equipment for several months, if not years, it was necessary to overhaul all of the signaling equipment. In the final analysis, more than \$750,000 was spent on signals. That alone was more than the entire amount placed in escrow at the outset of the project. However, the FRA left us no choice but to make all needed repairs to that vital component of railroad safety. **The \$752,221 figure does not include any amount for installation of new signal systems that did not previously exist, such as the grade crossing warning signals that were installed at Western Reserve Road in Boardman Township.** In any event, no amount was drawn down from the escrow to pay the invoices submitted by GE Transportation Systems Global Signaling, LLC. (Emphasis added).

Given the Board’s explicit recognition that the capital cost of replacing signals could be charged against the escrow account, it necessarily follows that overhead expenses associated with the necessary replacement of signals is directly attributed to RVI’s failure to keep the line operational and to protect essential equipment during RVI’s ownership of the line. In keeping with the literal language of the Order that placed CCPA in charge of the escrow account, and consistent with the reasoning expressed in its December 15, 2005 Decision, the \$752,221 cost of repairing the existing signals should be applied against the escrow account. This would eliminate the need to reimburse any amount to RVI, which deserves nothing in return for its willful violation of its common carrier obligations.

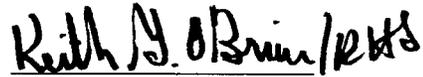
Conclusion

For all the above stated reasons, the Board should find that RVI's submission lacks merit. In addition, the Board should take this opportunity to rectify the error in requiring CCPA to return any of the escrowed funds to RVI by applying the amount spent on repairing signals, which was specifically authorized by the Board in November 2001.

Respectfully submitted,



Richard H. Streeter, Esq.
Barnes & Thornburg
750 17th St., N.W., Suite 900
Washington, D.C. 20006
202-408-6933 - telephone



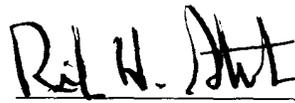
Keith G. O'Brien, Esq.
Rea, Cross & Auchincloss
1707 L Street, N.W., Suite 570
Washington, D.C. 20006
202-785-3700 - telephone
Counsel for Columbiana County Port
Authority

Date: February 9, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of February, 2006, served a true copy of the foregoing by first class mail, postage prepaid, on the following:

Richard R. Wilson, Esq.
Vuono & Gray, L.L.C.
2310 Grant Building
Pittsburgh, PA 15219

A handwritten signature in black ink, appearing to read "Richard H. Streeter", written over a horizontal line.

Richard H. Streeter